

# Inspector General

United States  
Department of Defense



Contracts Supporting the DOD Counter  
Narcoterrorism Technology Program Office

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE <b>25 SEP 2009</b>		2. REPORT TYPE		3. DATES COVERED <b>00-00-2009 to 00-00-2009</b>	
4. TITLE AND SUBTITLE <b>Contracts Supporting the DOD Counter Narcoterrorism Technology Program Office</b>				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) <b>Department of Defense Inspector General, 400 Army Navy Drive, Arlington, VA, 22202-4704</b>				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT <b>Approved for public release; distribution unlimited</b>					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT <b>Same as Report (SAR)</b>	18. NUMBER OF PAGES <b>102</b>	19a. NAME OF RESPONSIBLE PERSON
a. REPORT <b>unclassified</b>	b. ABSTRACT <b>unclassified</b>	c. THIS PAGE <b>unclassified</b>			

## Additional Information and Copies

To obtain additional copies of this report, visit the Web site of the Department of Defense Inspector General at <http://www.dodig.mil/audit/reports> or contact the Secondary Reports Distribution Unit at (703) 604-8937 (DSN 664-8937) or fax (703) 604-8932.

## Suggestions for Audits

To suggest or request audits, contact the Office of the Deputy Inspector General for Auditing at (703) 604-9142 (DSN 664-9142) or fax (703) 604-8932. Ideas and requests can also be mailed to:

ODIG-AUD (ATTN: Audit Suggestions)  
Department of Defense Inspector General  
400 Army Navy Drive (Room 801)  
Arlington, VA 22202-4704

<p>DEPARTMENT OF DEFENSE</p> 	<p><b>To report fraud, waste, mismanagement, and abuse of authority.</b></p> <p>Send written complaints to: Defense Hotline, The Pentagon, Washington, DC 20301-1900 Phone: 800.424.9098 e-mail: <a href="mailto:hotline@dodig.mil">hotline@dodig.mil</a> <a href="http://www.dodig.mil/hotline">www.dodig.mil/hotline</a></p>
--	--

## Acronyms and Abbreviations

ASD(SO/LIC)	Assistant Secretary of Defense for Special Operations /Low-Intensity Conflict
CNTPO	DOD Counter Narcoterrorism Technology Program Office
COR	Contracting Officer's Representative
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
FMR	Financial Management Regulation
IDIQ	Indefinite-Delivery, Indefinite-Quantity
QASP	Quality Assurance Surveillance Plan
RDT&E	Research, Development, Test, and Evaluation
SMDC	U.S. Army Space and Missile Defense Command/Army Forces Strategic Command
U.S.C.	United States Code



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

September 25, 2009

MEMORANDUM FOR THE UNDER SECRETARY OF DEFENSE

(COMPTROLLER)/CHIEF FINANCIAL OFFICER  
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY  
DEPUTY ASSISTANT SECRETARY OF DEFENSE  
FOR COUNTERNARCOTICS AND GLOBAL  
THREATS

DEPUTY ASSISTANT SECRETARY FOR  
PROCUREMENT, ASSISTANT SECRETARY OF  
THE ARMY (ACQUISITION, LOGISTICS, AND  
TECHNOLOGY)

DIRECTOR, U.S. ARMY SPACE AND MISSILE  
DEFENSE COMMAND/ARMY FORCES  
STRATEGIC COMMAND, CONTRACTING AND  
ACQUISITION MANAGEMENT OFFICE

SUBJECT: Contracts Supporting the DOD Counter Narcoterrorism Technology Program  
Office (Report No. D-2009-109)

We are providing this report for review and comment. We considered comments from the Under Secretary of Defense (Comptroller)/Chief Financial Officer; Defense Contract Audit Agency; Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats; and U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office, when preparing the final report.

DOD Directive 7650.3 requires that all recommendations be resolved promptly. The comments from the Under Secretary of Defense (Comptroller)/Chief Financial Officer and the Defense Contract Audit Agency were responsive. While some of the comments from the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats and from the U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office were responsive, some were not. Based on comments, we revised draft report Recommendations A.3.g and A.3.p and deleted Recommendation A.3.q. We also redirected Recommendation A.1 to the Deputy Assistant Secretary for Procurement, Assistant Secretary of the Army (Acquisition, Logistics, and Technology). Therefore, we request additional comments and documents for the recommendations listed in the recommendations table on page ii by October 26, 2009.

Please provide comments that conform to the requirements of DOD Directive 7650.3. If possible, send a .pdf file containing your comments to [audacm@dodig.mil](mailto:audacm@dodig.mil). Copies of your comments must have the actual signature of the authorizing official for your organization. We are unable to accept the / Signed / symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-8900 (DSN 664-8900).

A handwritten signature in cursive script, reading "Mary L. Ugone".

Mary L. Ugone  
Deputy Inspector General  
for Auditing





# Results in Brief: Contracts Supporting the DOD Counter Narcoterrorism Technology Program Office

## What We Did

The overall objective was to determine whether DOD officials properly managed and administered the contracts supporting the DOD Counter Narcoterrorism Technology Program Office (CNTPO). Specifically, we reviewed contract management, surveillance, and billing for 35 task orders worth approximately \$98.8 million issued on or before August 16, 2008.

## What We Found

- The CNTPO internal controls were not adequate. We identified weaknesses in the management, surveillance, and billing processes of the contracting officials and the CNTPO.
- U.S. Army Space and Missile Defense Command/Army Forces Strategic Command (SMDC) contracting officials and contracting officer's representatives (CORs) did not perform proper contract management for the 35 task orders reviewed valued at \$98.8 million and could waste \$439,000 on fees to acquire commercial items (Finding A).
- SMDC contracting officials and CORs did not develop surveillance plans, use receiving reports to formally accept goods and services, or review expenses charged by contractors (Finding B).
- DOD officials did not ensure that the contractors were entitled to the \$47.9 million paid on the CNTPO indefinite-delivery, indefinite-quality task orders (Finding C).
- CNTPO officials had four potential Purpose Statute violations, which could result in potential Antideficiency Act violations amounting to approximately \$20.5 million (Finding D).

## What We Recommend

- The Deputy Assistant Secretary for Procurement, Assistant Secretary of the Army (Acquisition,

Logistics, and Technology) conduct an administrative review of the contracting officers.

- SMDC contracting officials should maintain proper contract files; use the appropriate contract types when awarding CNTPO task orders; properly identify, track, and monitor Government-furnished property provided to the contractor; obtain Theater Business Clearances; implement and monitor quality assurance surveillance plans; properly designate trained CORs; require CORs and CNTPO contractors to follow billing requirements, and use receiving reports to formally accept goods and services.
- The Director, Defense Contract Audit Agency should review all public vouchers and conduct a cost audit of the indefinite-delivery, indefinite-quality contracts.
- The Under Secretary of Defense (Comptroller)/Chief Financial Officer should direct the Under Secretary of Defense for Policy to initiate a preliminary review of the four potential Antideficiency Act violations.
- The Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats should stop all work on construction projects over \$1.5 million until they are appropriately budgeted for.

## Management Comments and Our Responses

We received comments from Under Secretary of Defense (Comptroller)/Chief Financial Officer; Defense Contract Audit Agency; Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats; and SMDC. Many of the comments from SMDC were generally nonresponsive or require additional clarification. Please see the recommendations table on the back of this page.

## Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Under Secretary of Defense (Comptroller)/Chief Financial Officer		D.1
Director, Defense Contract Audit Agency		C.1
Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats	D.2	
Deputy Assistant Secretary for Procurement, Assistant Secretary of the Army (Acquisition, Logistics, and Technology)	A.1	
Director, U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office	A.2.a, A.2.b.1-A.2.b.9, A.2.b.11-A.2.b.16, B.1, B.2, B.3, B.6, C.2.a, and C.2.c	A.2.b.10, B.4, B.5, and C.2.b

**Please provide comments by October 26, 2009.**

# Table of Contents

<b>Introduction</b>	1
Objective	1
Background	1
Review of Internal Controls	2
<b>Finding A. Contract Management</b>	3
Management Comments on the Finding and Our Response	11
Recommendations, Management Comments, and Our Response	12
<b>Finding B. Contract Surveillance</b>	24
Management Actions Taken	27
Management Comments on the Finding and Our Response	27
Recommendations, Management Comments, and Our Response	28
<b>Finding C. Contractor Billing</b>	32
Management Comments on the Finding and Our Response	37
Recommendations, Management Comments, and Our Response	37
<b>Finding D. Potential Antideficiency Act Violations</b>	41
Management Comments on the Finding and Our Response	46
Recommendations, Management Comments, and Our Response	47
<b>Appendices</b>	
A. Scope and Methodology	50
B. Management Comments on Finding D and Our Response	53
<b>Management Comments</b>	
Under Secretary of Defense (Comptroller)/Chief Financial Officer	55
Defense Contract Audit Agency	58
Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats	60
U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office	72



# Introduction

## Objective

Our overall audit objective was to determine whether DOD officials properly managed and administered the contracts supporting the DOD Counter Narcoterrorism Technology Program Office (CNTPO). Specifically, we determined whether DOD officials complied with Federal and DOD policy for those contracts. See Appendix A for a discussion of the scope and methodology related to the objectives. We plan to conduct a follow-on audit to conduct follow-up and review task orders awarded after our review.

We performed this audit pursuant to Public Law 110-181, “The National Defense Authorization Act for Fiscal Year 2008,” section 842, “Investigation of Waste, Fraud, and Abuse in Wartime Contracts and Contracting Processes in Iraq and Afghanistan.” Section 842 requires thorough investigation and auditing to identify potential waste, fraud, and abuse in the performance of DOD contracts, subcontracts, and task and delivery orders for the logistical support of coalition forces in Iraq and Afghanistan. Further, section 842 requires thorough investigation and auditing of Federal agency contracts, subcontracts, and task and delivery orders for the performance of security and reconstruction functions in Iraq and Afghanistan. We reviewed task orders under contracts W9113M-07-D-0005, W9113M-07-D-0006, W9113M-07-D-0007, W9113M-07-D-0008, and W9113M-07-D-0009 for support provided in Afghanistan as well as other locations.

## Background

According to officials from CNTPO, their mission is to develop, deploy, and provide technology and acquisition solutions to engage, disrupt, and deter drug and narcoterrorism operations around the world. CNTPO provides its services to law enforcement, Defense and civilian agencies, and partner nations participating in the effort against drugs and narcoterrorism. The Naval Surface Warfare Center, Dahlgren Division is the Executive Agent for CNTPO, which is chartered by the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats. The Deputy Assistant Secretary of Defense reports to the Under Secretary of Defense for Policy.

On behalf of CNTPO, officials from the U.S. Army Space and Missile Defense Command/Army Forces Strategic Command (SMDC), Contracting and Acquisition Management Office awarded indefinite-delivery, indefinite-quantity (IDIQ) contracts on August 24, 2007. The CNTPO IDIQ contracts have a \$15 billion ceiling with a 5-year period of performance, composed of a base year and 4 option years. SMDC contracting officials issued the IDIQ contracts to five prime contractors: Blackwater Lodge and Training, Inc. (Blackwater); Lockheed Martin Integrated Systems, Inc. (Lockheed Martin); TASC, Inc. (TASC); Raytheon Technical Services Company (Raytheon); and ARINC Engineering Services, LLC (ARINC).

As of March 12, 2009, SMDC contracting officials issued 80 task orders potentially worth about \$1.2 billion. We reviewed 35 of the 80 task orders, totaling approximately \$98.8 million, issued on or before August 16, 2008. For specific details regarding the task orders reviewed, see Appendix A.

The CNTPO IDIQ contracts allow for three types of task order awards—firm-fixed-price, level-of-effort; cost-plus-fixed-fee; and cost-reimbursable (cost)—which may be used in combination for a task order. According to the task orders, the contractors are required to provide services, materials, and critical equipment in diverse locations such as Southwest Asia,<sup>1</sup> Trans-Sahara,<sup>2</sup> and Colombia. Specifically, the contractors will provide services in three main areas: technology development and application; training, operations, and logistics support; and professional and executive support. SMDC contracting officials allowed the contractors to charge services using 81 labor categories with established labor rates.

## **Review of Internal Controls**

DOD Instruction 5010.40, “Managers’ Internal Control (MIC) Program Procedures,” January 4, 2006, requires DOD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for SMDC. SMDC did not have adequate internal controls for managing and administering CNTPO IDIQ contracts. Specifically, SMDC contracting officials did not properly complete training requirements; maintain complete contract files; use firm-fixed-price, level-of-effort, or cost contracts; develop quality assurance surveillance plans; or designate trained contracting officer’s representatives for task orders. In addition, CNTPO officials did not conduct proper contract surveillance or properly fund task orders. For specific results of these weaknesses, see findings A, B, C, and D of this report. Implementing all recommendations will resolve the identified weaknesses. We also recommend that the Under Secretary of Defense (Comptroller)/Chief Financial Officer request the Under Secretary of Defense for Policy to conduct an initial review of the four potential Antideficiency Act violations. We will provide a copy of this report to the senior official responsible for internal controls in the Department of the Army and the Office of the Under Secretary of Defense for Policy.

---

<sup>1</sup> According to task orders, the Southwest Asia region consisted of Pakistan, Afghanistan, Azerbaijan, and Kyrgyz Republic.

<sup>2</sup> According to task orders, the Trans-Sahara region consisted of Chad, Mali, Mauritania, Morocco, Niger, Senegal, Nigeria, Tunisia, and Libya.

## **Finding A. Contract Management**

SMDC contracting officers and the contracting officer's representatives (CORs) did not properly manage the 35 task orders reviewed, valued at \$98.8 million. Specifically, the contracting officers did not do the following:

- Maintain complete contracting files or require all parties involved to sign memoranda of agreements.
- Properly use firm-fixed-price contract line items for 28 task orders valued at \$32.5 million for de facto cost-type contracts.
- Properly use firm-fixed-price contract line items in 10 task orders for \$16.1 million to buy commercial items; instead they used cost-plus-fixed-fee contract line items and could waste about \$439,000.
- Properly exercise options for four task orders.
- Properly identify or manage Government-furnished property by requiring accountability for an undeterminable quantity of Government property including personal locator beacons, night-vision goggles, and encryption equipment.
- Obtain a Theater Business Clearance before contract award for six task orders from the Joint Contracting Command for Iraq/Afghanistan in Afghanistan.

SMDC contracting officers did not properly manage CNTPO IDIQ contracts because the contracting officers were not properly trained. Inadequate contract management increases the chance that policies will not be followed and laws will be broken. Additionally, the lack of property identification and management reduces Government's ability to determine the whereabouts and condition of Government-furnished property, increasing the likelihood of loss of Government funds. As a result, the goods and services received through these 35 task orders might not meet the needs of the customer or end user, hindering efforts to deter narcoterrorism.

### **Management of Task Orders**

SMDC contracting officials and CORs did not properly manage the 35 task orders totaling approximately \$98.8 million that we reviewed. Of the \$98.8 million, approximately \$32.5 million was for firm-fixed-price, level-of-effort contract line items; the remaining \$66.3 million was for cost or cost-plus-fixed-fee contract line items. Specifically, contracting officers did not maintain complete contract files; require all parties sign memoranda of agreements; adequately use firm-fixed-price, level-of-effort or cost-plus-fixed-fee or IDIQ contracts, or complete the required training for contracting officers. Additionally, contracting officers improperly exercised options and extended contracts beyond the timeframes stipulated in the contract.

#### ***Complete Contract Files***

Federal Acquisition Regulation (FAR) Subpart 4.8, "Government Contract Files," September 28, 2006, identifies requirements for establishing and maintaining contract files. Specifically, FAR Subpart 4.8 states that there must be a contract file for each contract and the contract file should contain the records of all contractual actions taken.

Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 204.8, “Contract Files,” January 24, 2008, requires that official contract files consist of original, authenticated, or conformed copies<sup>3</sup> of contractual instruments, as well as signed or official copies of correspondence, memoranda, and other documents. Each contract file should provide a complete background for decision making, actions taken, and reviews and investigations, as well as to furnish essential facts in case of litigation or congressional review.

However, SMDC contracting officials did not maintain complete contract files. As of August 28, 2008, original contract modifications were missing from the contract files for 9 of the 35 task orders reviewed. During our site visit to SMDC, contracting officials only provided hard copy contracting files and informed the audit team that those hard copy files were complete. All the missing modifications were dated and issued before our site visit in August 2008 and should have been included in the contract files. We identified the missing modifications by comparing the contracting officer’s original files to COR files and funding documents. For example, SMDC contracting officials did not include modification 2 for task order W9113M-07-D0005-0005 or modification 2 for task order W9113M-07-D0007-0006. According to contracting officials, they did not maintain the contract files because they were more focused on supporting the warfighter. Contracting officials should maintain complete contract files in accordance with Federal and DOD requirements for all IDIQ contracts and task orders.

### ***Memoranda Signatures***

Both FAR and DFARS require that the contract file include signed copies of contractual instruments. However, the contracting officer did not require that all parties sign memoranda of agreement. Specifically, the letters designating the Defense Contract Management Agency officials to administer the CNTPO contracts were not signed by any Defense Contract Management Agency officials. The contracting officers also did not require that all parties sign 12 of the 35 task order authorization letters. SMDC required that legal counsel sign the authorization letter when the task order amount exceeded \$500,000. For instance, the contracting officer did not ensure that the SMDC legal counsel signed the authorization letter for task order W9113M-07-D0005-0002. The authorization letters verified that the customer provided the appropriate funding for the contract and that CNTPO officials had the authority to procure the goods or services specified in the contract.

SMDC contracting officials should implement procedures to ensure that CNTPO contract files comply with FAR Subpart 4.8 and DFARS 204.802 requirements. SMDC officials should also ensure that all parties involved in memoranda sign the documentation to minimize the possibility of disputes.

---

<sup>3</sup> DFARS 204.802 defines conformed copies as being complete and accurate, including the date signed and the names and titles of those who signed the documents.

## ***Firm-Fixed-Price Contracts***

SMDC contracting officials did not properly award firm-fixed-price, level-of-effort contract line items for 28 of the 35 task orders we reviewed worth approximately \$32.5 million. Rather, contracting officials should have issued a cost-type contract. According to FAR Subpart 16.2, “Fixed-Priced Contracts,” March 2005, a firm-fixed-price contract establishes a price in the contract that is not subject to any adjustment during the contractor’s performance. Firm-fixed-price contracts place maximum risk and full responsibility for costs and profits on the contractor, forcing the contractor to control costs and perform effectively. FAR Subpart 16.2 also states that firm-fixed-price contracts should be used for the acquisition of supplies or services when the contracting officer can reasonably establish fair and reasonable prices.

The SMDC contracting officers issued task orders that primarily used firm-fixed-price, level-of-effort type contracts that funded narcoterrorism services. FAR 16.207, “Firm-fixed-price, level-of-effort term contracts” states that a firm-fixed-price, level-of-effort contract requires the contractor to provide a specified level of effort over a stated period. The contractor receives a fixed dollar amount based on the *effort* expended and not on the *results* achieved. Lastly, any contract over \$100,000 must be approved in writing by the head of contracting.

However, the contracting officer stated that the “level of effort” identified in the 28 task orders was based on total hours billable at established labor rates. The task orders stated that performance should not exceed the number of hours identified in the task order. Instead, the task orders should have identified a fixed dollar amount as required by FAR 16.207. In doing this, the contractor billed the Government on a cost basis instead of for a fixed price.

We asked the SMDC contracting officers their reasons for awarding firm-fixed-price, level-of-effort contracts for services billed by the hour. The SMDC contracting officials stated that they did so because these contracts provide the contractors with maximum flexibility to perform the services. However, an SMDC contracting officer contradicted that statement when he stated that firm-fixed-price, level-of-effort contracts “were not the type of contracts the contracting officers wanted or needed.” Another SMDC official stated they (SMDC contracting officers) did not want to use cost-type contracts, because those contracts entailed increased oversight and cost audits. In using firm-fixed-price, level-of-effort contracts, contracting officials circumvented the FAR to avoid the oversight reviews conducted by the Defense Contract Audit Agency and other requirements for cost, time-and-materials, or labor-hour contracts. Lastly, on November 3, 2006, the Deputy Assistant Secretary of the Army for Policy and Procurement approved the acquisition strategy for the overall IDIQ contracts. SMDC contracting officials stated that this approval allowed them to use firm-fixed-price, level-of-effort contracts.

Additionally, 13 of 28 task orders contained firm-fixed-price, level-of-effort contract line items that exceeded \$100,000; however, CNTPO did not include an approval document in the contract file. The approval should have been signed by the head of contracting.

SMDC contracting officers should remove the firm-fixed-price, level-of-effort requirements from current task orders that should have been awarded as a cost contract and include a written determination for the change in the contract file. The SMDC contracting officers should also include an approval document in the contract files for task orders exceeding \$100,000.

### ***Cost-Plus-Fixed-Fee Contracts***

FAR Subpart 16.3, “Cost Reimbursement Contracts,” June 14, 2007, states that a cost-plus-fixed-fee contract is a type of cost-reimbursement (cost) contract that allows a fee being paid to a contractor to remain fixed. The fixed fee does not vary in relation to the actual cost, but may be adjusted because of changes in the work performed under the contract. Acquisition of commercial items under a cost-plus-fixed-fee contract is strictly prohibited. Instead, FAR Subpart 12.2, “Special Requirements for the Acquisition of Commercial Items,” February 12, 2007, requires that agencies use firm-fixed-price contracts to acquire commercial items. FAR Subpart 2.1 defines commercial items as goods used by the public or a nongovernmental entity that either have been offered for sale, offered for lease, or licensed, or have been sold, leased, or licensed to the public or a nongovernmental entity. The use of firm-fixed price contracts when purchasing a commercial item is required to avoid fees contractors can charge the Government for procuring items that can be purchased by the public.

However, SMDC contracting officers used cost-plus-fixed-fee contract line items incorrectly for 10 of the 35 task orders we reviewed. Specifically, the contracting officer used the contract line items to acquire commercial items totaling approximately \$16.1 million for ground sensors, replacement parts, laptops, cell phones, and off-road vehicles. Of the \$16.1 million, the contracting officer authorized the contractor to receive \$439,000 in fees for the purchase of those commercial items. SMDC contracting officials stated that because they did not consider the items acquired through the 10 task orders as commercial items, the rules for purchasing a commercial item did not apply. We disagree with SMDC contracting officials that the items were not commercial. For instance, some of the items were available for the public to purchase from the manufacturer or a supplier; other items were commercial items available through a General Services Administration, Federal supply schedule. Consequently, SMDC contracting officials could waste approximately \$439,000 by paying unnecessary fees to contractors for commercial items. Contracting officers should request a refund of any fee paid for the procurement of the commercial items.

Additionally, FAR 16.306, “Cost-Plus-Fixed-Fee Contracts,” states that no cost-type contracts, to include cost-plus-fixed-fee contracts, should be used unless the Government conducts appropriate surveillance for these contracts. However, SMDC contracting officers did not ensure adequate surveillance for the 35 task orders reviewed. Because of this, contracting officers should not award task orders with cost or cost-plus-fixed-fee contract line items until they can demonstrate that they can provide adequate surveillance using quality assurance surveillance plans (QASPs). Contracting officers should use only cost-type contract line items when the necessary controls are in place and adequate

contract surveillance can be provided for these task orders. See Finding B for the discussion of the contract surveillance for the 35 task orders reviewed.

### ***Indefinite-Delivery, Indefinite-Quantity Task Order***

FAR Subpart 16.5, “Indefinite-Delivery Contracts,” September 28, 2006, states that an IDIQ contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders through this contract for individual requirements. FAR Subpart 16.5 also states that individual orders under indefinite-delivery contracts must clearly describe the services being performed or supplies being delivered. Orders placed under indefinite-delivery contracts must contain the contract item number for supplies and services, and the description, quantity, and unit price or estimated cost. However, the SMDC contracting officer issued task order W9113M-07-D-0006-0004 to purchase an indefinite quantity of tracking devices. The task order’s performance work statement included an option to procure a minimum of 10 units, up to an indefinite quantity, but no unit price for the tracking devices was stated in the task order. The SMDC contracting office did not comply with FAR Subpart 16.5 requirements. The contracting office should modify task order W9113M-07-D-0006-0004 to conform to FAR Subpart 16.5 and should not issue any other task orders that deviate from these FAR requirements.

### ***Options and Extensions***

FAR Subpart 17.2, “Options,” June 30, 2007, states that when exercising an option, the contracting officer must provide written notice to the contractor within the period specified in the contract. FAR Subpart 17.2 also states that before exercising an option, the contracting officer must make a written determination for the contract file. The written determination should state whether exercising the option is in accordance with the terms of the contract. Even then, the contracting officer may exercise an option only after determining that funds are available. The CNTPO IDIQ contracts included yet another requirement, FAR clause 52.217-8, “Option to Extend Services,” November 1999. It requires that the contracting officer specify the period for which the contracting officer may extend the contract, no longer than 6 months, in writing to the contractor.

On or around March 28, 2008, SMDC contracting officials issued a modification to the IDIQ contracts to incorporate FAR clause 52.217-9, “Option to Extend the Term of the Contract,” March 2000. The modification allows SMDC contracting officers to extend the terms of the contract by written notice to the contractor within 7 days of contract expiration, provided that the Government gives a preliminary written notice of its intent to extend at least 10 days before the contract expires. The total duration of the contract, including any options exercised under this clause, cannot exceed 60 months.

Of the 35 CNTPO task orders reviewed, 8 included options. SMDC contracting officials improperly exercised option(s) on four of the eight task orders. For instance, the period of performance for task order W9113M-07-D-0007-0003 was from September 28, 2007, through February 27, 2008. However, SMDC contracting officials exercised the option on February 27, 2008, 1 day before the option period began. The contracting officer also did



not include a written determination in the contract file to document whether the option was exercised in accordance with the terms of the contract or that funding was available.

Additionally, SMDC contracting officials did not properly extend one task order. Specifically, task order W9113M-07-D-0007-0004 had a period of performance from December 12, 2007, to March 11, 2008. However, on March 21, 2008, SMDC contracting officers issued a modification extending the period of performance through July 2008. The contracting officer extended the contract 10 days *after* the contract period of performance concluded and did not provide a written notice to the contractor, violating FAR clause 52.217-8.

SMDC contracting officials should properly exercise options and extend contracts in accordance with the FAR. Without following the FAR, the contracting officer does not provide the contractor with the proper notification and may cause delays, increased costs or disagreements.

## **Government-Furnished Property**

FAR Subpart 45.1, "General," June 14, 2007, defines Government-furnished property as property possessed or acquired by the Government and subsequently furnished to the contractor for performance of a contract. FAR Subpart 45.2, "Solicitation and Evaluation Procedures," June 14, 2007, requires contracting officers to identify all Government-furnished property anticipated in all solicitations. The property listing should include name, description, manufacturer, model number, national stock number (if applicable), quantity, unit acquisition cost, and a unique item identifier. Moreover, FAR clause 52.245-1, "Government Property," June 2007, states that the Government will deliver the property described in the contract.

Of the 35 task orders reviewed, 8 task orders contained Government-furnished property. However, the SMDC contracting officers did not include a detailed listing of all Government-furnished property in the task orders. The contracting officers also did not properly manage the Government-furnished property provided to contractors. Specifically, the contracting officers either did not maintain any property records or they did not maintain complete property records for CNTPO property in the contract files. The property included personal locator beacons, night-vision goggles, and encryption equipment. According to DOD Manual 4100.39-M, "Federal Logistics Information System," volume 10, "Multiple Application References, Instructions, Tables, and Grids," table 61, "Controlled Inventory Item Codes," April 2009, personal locator beacons, night-vision goggles, and encryption equipment are considered sensitive items requiring a high degree of protection and control.

While Government-furnished property was discussed in the eight task orders, the contracting officer did not include specific information about the items being furnished, such as serial, part, or inventory numbers. DOD Instruction 5000.64, "Accountability and Management of DOD-Owned Equipment and Other Accountable Property," November 2,

2006, requires that DOD Components establish records and maintain accountability for Government property furnished to contractors.<sup>4</sup> Accountable property records must include the current status and location of the property. At a minimum, an accountable property system of record should include:

- name, part number, and description;
- quantity and status of the property;
- unique item identifier;
- location of property; and
- transaction dates.

Further, SMDC contracting officials did not formally designate the Defense Contract Management Agency to conduct administrative oversight of the CNTPO IDIQ task orders. The administrative oversight could include property management such as analysis of a contractor property management system, conducting Government property inventories, and ensuring contractual compliance. Although the contracting officer prepared a memorandum of agreement for Defense Contract Management Agency officials to sign, he stated that he did not send the agency the memorandum to formalize the agreement. Additionally, the contracting officer stated that he had not been in contact with anyone from the Defense Contract Management Agency to coordinate any work on the contracts prior to the audit.

Without adequate surveillance, Government-furnished property could be lost or misplaced, causing the Government to lose money and time. In addition, the loss of controlled items such as night-vision goggles could jeopardize national security<sup>5</sup> and the effectiveness of counter narcoterrorism missions around the world.

Contracting officials, with the help of the CORs, should identify all Government-furnished property in the solicitation for each task order as required by FAR Subpart 45.2. The contracting officers should also use an approved system to track and monitor Government-furnished property. This system would enable DOD officials to track the location, quantity, and status of the Government-furnished property. Additionally, contracting officers should formalize an agreement with the Defense Contract Management Agency to perform administrative oversight of the CNTPO IDIQ task orders and request that they appoint a certified property administrator to conduct an inventory of Government property. The contracting officer should require the property administrator to conduct at least semiannual reviews to ensure the accuracy of the records for Government property in the custody of contractors. Correct property identification is essential to avoid loss or misuse of Government-furnished property.

---

<sup>4</sup> DOD Instruction 5000.64, states that all DOD Components are required to establish records and maintain accountability for property of any value, furnished to contractors as Government-furnished property.

<sup>5</sup> DOD Instruction 5000.64 requires that controlled items be protected in the interest of national security.

## **Theater Business Clearance Memoranda**

SMDC contracting officials did not obtain Theater Business Clearance for six of the seven task orders performed in Afghanistan, and none had a letter assigning contract administration to the Joint Contracting Command for Iraq/Afghanistan. According to the Under Secretary of Defense for Acquisition, Technology, and Logistics Memorandum, "Procedures for Contracting, Contract Concurrence and Contract Oversight for Iraq and Afghanistan," October 19, 2007, DOD contracting officers must request that the Commander, Joint Contracting Command for Iraq/Afghanistan approve statements of work for the delivery of supplies and services in Iraq and Afghanistan before contract award.

Another Under Secretary of Defense for Acquisition, Technology, and Logistics Memorandum, "Retroactive Iraq/Afghanistan Contract Compliance and Assignment of Contract Administration," December 20, 2007, requires that contracting officers submit a Theater Business Clearance memorandum package to the Joint Contracting Command for Iraq/Afghanistan for any contract they plan to award that includes personnel assigned or delivery of materiel to Iraq or Afghanistan after April 1, 2008. The December 20, 2007, memorandum also requires that the contracting officer include a letter in the package assigning contract administration to the Joint Contracting Command for Iraq/Afghanistan for any portion to be performed in Iraq or Afghanistan. According to the memorandum, the Theater Business Clearance enables the Commander, Joint Contracting Command for Iraq/Afghanistan to maintain overall responsibility for contract administration for work in the commander's area of responsibility.

The contracting officer should submit a Theater Business Clearance memorandum package for all contracts performed in Iraq and Afghanistan and assign contract administration to the Joint Contracting Command for Iraq/Afghanistan. In addition, the contracting officers should modify all existing task orders with Theater Business Clearances to include all contract clauses required by the Under Secretary of Defense for Acquisition, Technology, and Logistics memoranda.

## **Need for Training**

SMDC contracting officers did not properly manage the CNTPO IDIQ contracts or Government-furnished property because contracting officers were not properly trained. The Under Secretary of Defense for Acquisition, Technology, and Logistics issued a policy memorandum, "Continuous Learning Policy for the DOD Acquisition, Technology, and Logistics Workforce," September 13, 2002, that requires contracting officers to stay current in acquisition, technology, and logistics initiatives, as well as in leadership and management. Additionally, contracting officers must obtain experience in their area of expertise and complete certification training. Army guidelines encourage that contracting officers obtain 40 continuous learning points annually, but requires the contracting officers to complete 80 continuous learning points within a 2-year period.

We reviewed the training records for the four SMDC contracting officers involved with the CNTPO IDIQ contracts from October 1, 2006, through September 30, 2008. Three of

four contracting officers took only one contract-related training during FY 2007 through FY 2008. The training taken by the contracting officers was a Structuring Contracts course, worth two continuous learning points. The remaining contracting officer had no contract-related training in FY 2007 or FY 2008. However, contracting officials maintained that they received the appropriate continuous learning points in accordance with Federal and DOD Policy. Even additional training information SMDC officials provided did not identify the courses they attended from FY 2007 through FY 2008. It is the contracting officers' responsibility to complete 80 continuous learning points every 2 years to stay current in their functional areas. The Director, SMDC, Contracting and Acquisition Management Office should conduct an annual training review of all warranted contracting officers to ensure that they receive the appropriate training to maintain their skills. Based on the significant issues identified, the Deputy Assistant Secretary of Defense for Procurement, Assistant Secretary of the Army (Acquisition, Logistics, and Technology) should also conduct an administrative review of the contracting officers that provided management oversight of the CNTPO IDIQ contracts to determine whether personnel action is warranted for deficiencies identified.

## **Conclusion**

Lack of contract management increases the chance that policies will not be followed and laws will be broken. Additionally, the lack of property identification and management reduces Government's ability to determine the whereabouts and condition of the Government-furnished property, potentially causing millions of dollars to be wasted. The goods and services received through these 35 task orders might not meet the needs of the customer or the end user, thereby hindering efforts to deter narcoterrorism. Additionally, equipment used for counter narcoterrorism could be lost or end up in the wrong hands.

## **Management Comments on the Finding and Our Response**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, stated that the support requirements for CNTPO were greater than estimated at contract award. She explained that the contracting office did not have enough personnel to adequately support a quick rate of contracting for a program as critical as CNTPO. The Director stated that the material weaknesses identified in the report were directly attributable to staffing shortfalls. She stated that recruitment actions have been initiated and that enough staff will be on board to execute program requirements by second quarter FY 2010.

### ***Our Response***

Although we understand that a lack of contracting personnel was an issue, the weaknesses reported were not all caused by the lack of contracting personnel. Specifically, the Director must ensure that contracting officers are trained and implement sound contracting practices in all CNTPO task orders. Additionally, contracting officers must ensure that staff members are sufficiently trained to execute firm-fixed-price and

cost-plus-award-fee contracts and manage and maintain proper control over Government-furnished property.

## **Recommendations, Management Comments, and Our Response**

### ***Redirected, Revised, Deleted, and Renumbered Recommendations***

Based on comments from the Director, Contracting and Acquisition Management Office, we redirected Recommendation A.1 to the Deputy Assistant Secretary for Procurement, Assistant Secretary of the Army (Acquisition, Logistics, and Technology). We redirected Recommendation A.1 to ensure that an administrative review of contracting officers overseeing CNPTO task orders is conducted. As a result of redirecting that recommendation, draft report Recommendation A was split and renumbered as Recommendations A.1 and A.2.

We revised draft report Recommendation A.3.g to final report Recommendation A.2.b.7 because we intended for the Director, Contracting and Acquisition Management Office, to confirm that the Government, not the contractors, has adequate surveillance in place before future awards of cost-type task orders. We also revised draft report Recommendation A.3.p to final report Recommendation A.2.b.16 because we agree with the Director that a more appropriate recommendation would be to review the terms of the basic contracts, rather than the task orders, to ensure appropriate clauses and contract terms are included for overseas support requirements.

As a result of management comments, we deleted draft report Recommendation A.3.q, which was covered under final report Recommendation A.2.

**A.1. We recommend that the Deputy Assistant Secretary for Procurement, Assistant Secretary of the Army (Acquisition, Logistics, and Technology) conduct an administrative review of the contracting officers and their specialists who oversaw the management of the DOD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts from the U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office and take any personnel action warranted for deficiencies identified. A copy of the report should also be provided to the Department of Defense Office of Inspector General.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, did not agree. She stated that the audit report did not identify specific infractions that warrant disciplinary action, nor has she observed such infractions. The Director suggested that we revise the recommendation to require that she assess, acquire, and train the resources necessary to effectively and efficiently support the CNTPO contracts. The Director acknowledged that the contracting staff did not keep pace with the workload of the CNTPO contracts. She

stated that recruitment actions were underway and that by second quarter FY 2010 adequate staff would be hired.

### ***Our Response***

As a result of the Director's comments, we redirected draft report Recommendation A.1 to the Deputy Assistant Secretary for Procurement, Assistant Secretary of the Army (Acquisition, Logistics, and Technology). We request that the Deputy Assistant Secretary for Procurement provide comments in response to the final report.

#### **A.2. We recommend that the Director, U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office:**

**a. Conduct an annual training review of all warranted contracting officers to ensure that they receive training required by the Under Secretary of Defense for Acquisition, Technology, and Logistics policy memorandum, "Continuous Learning Policy for the DOD Acquisition, Technology, and Logistics Workforce," September 13, 2002.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that SMDC conducts training reviews at least semiannually. The Director stated that the SMDC contracting officers have the certifications required for their position and have satisfied the continuous learning requirements. The Director stated that training records clearly reflect the training contracting officers completed. Lastly, the Director stated that the contracting office has identified additional contracting courses to improve the personnel's performance. She stated that contracting officers would complete the training courses by third quarter FY 2010.

### ***Our Response***

The Director, Contracting and Acquisition Management Office, agreed; however, it is not clear what SMDC based its semiannual review on since we made repeated requests for the training records and certificates discussed in the Director's comments. However, the contracting officers were not able to provide training records or certificates for the courses they attended. The only document contracting officials could provide was a summary report of their training showing total hours. The summary report showed that one of the four contracting officers had no continuous learning points, and the remaining three contracting officers had only two continuous learning points. Therefore, we request that the Director provide in response to the final report copies of the detailed training reports and certificates showing that SMDC contracting officers overseeing CNTPO task orders were trained in accordance with DOD policy.

**b. Instruct the contracting officers to:**

**(1) Maintain proper contract files in accordance with Federal Acquisition Regulation Subpart 4.8, “Government Contract Files,” and Defense Federal Acquisition Regulation Supplement Subpart 204.8, “Contract Files.”**

***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that the limited personnel resources required that contracting officers focus on supporting the warfighter rather than on maintaining contract files. The Director stated that during our visit at fiscal year end, contracting officers were processing urgent requirements supporting the warfighter, leaving the filing of hard copy documents to be completed. The Director stated that contractual documents were maintained in the contracting office’s contract writing system. The Director stated that we made no requests to review files located in the contract writing system. The Director stated that, by first quarter FY 2010, her office would conduct an inventory of all files to ensure proper labeling and completion. The Director stated that personnel in her office would use a checklist to ensure consistency in contract file maintenance.

***Our Response***

The Director, Contracting and Acquisition Management Office, agreed but still has not taken appropriate actions to ensure that contracting files comply with the FAR. The contract writing system is not a contract storage system and should not be used as such. At the time of our visit, we requested that the contracting officers provide us with the complete contract files for the CNTPO task orders. Contracting officials did not alert the auditors that contractual documents were located elsewhere. We request that the Director in response to the final report provide a copy of the task order file checklist her staff will use during their inventory of CNTPO contract files.

**(2) Require that all parties named in memoranda sign the documentation.**

***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed that DFARS subpart 204.8 requires that official contract files contain original copies of contractual instruments and signed or official copies of correspondence memorandum and other documents. She stated that the purpose of the Task Order Authority Memorandum of Record (authority memorandum) was to document the statutory authority for the requirement presented. The Director stated that the missing signature on some authority memoranda was the “reviewed by” signature of SMDC legal counsel. The Director explained that the legal counsel review was to document that the task order met legal requirements. She stated that legal counsel sometimes completed the task order reviews electronically and did not always sign an authority memorandum. The Director stated that the acceptance of the authority memorandum was inferred in the legal counsel’s legal sufficiency statement. The Director stated that requiring legal counsel to sign authority



memoranda is redundant and that the signature line will be removed from future authority memoranda.

The Director also stated that a blanket delegation was provided to the five CNTPO IDIQ contractors at the time of contract award. She stated that SMDC executed separate delegations for task orders to be performed outside the continental United States. The Director stated that the missing portion of the task order delegation was the acknowledgment by the Defense Contract Management Agency administrative contracting officer in Afghanistan. The Director stated that SMDC has tried to get the Defense Contract Management Agency to acknowledge its administrative duties but has not fully reached an agreement. The Director stated that SMDC plans to have the administrative contracting officers issue subdelegations to Defense Contract Management Agency officials located near the place of CNTPO task order performance. The Director stated that she continues to work with the Defense Contract Management Agency to execute appropriate subdelegations.

### ***Our Response***

The Director's decision to eliminate the requirement for legal counsel to sign memoranda documenting legal review of all task orders over \$500,000 weakens internal controls. If the legal counsel review is required to ensure legal sufficiency, the signature confirms the review was completed by the appropriate official. We believe that this is a necessary step in the task order review process to ensure that a task order package electronically sent to legal counsel for review is not overlooked. We request that the Director reconsider her planned action, to remove the legal counsel signature line from authority memoranda for CNTPO task orders, and provide comments in response to the final report.

As for delegation of authority, we made repeated requests to SMDC contracting officers for the designation letters signed by the administrative contracting officer. The contracting officer responsible for obtaining the signatures stated that he believed that typing the Defense Contract Management Agency's name and address on the front of the contract meant the delegation was formalized. We also request that the Director include in her response signed copies of the formal designation of the Defense Contract Management Agency as administrator of CNTPO task orders for the five contractors.

**(3) Remove the firm-fixed-price, level-of-effort requirements from task orders that should be awarded as cost contracts and include a written determination for the change in the contract file.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, stated that SMDC agrees that the CNTPO task orders executed as firm-fixed-price, level-of-effort were administered as labor-hour contracts. The Director stated that the acquisition planning team deemed the firm-fixed-price, level-of-effort task orders as labor-hour contracts because the requirements were not quantifiable and that the majority of the work would be performed outside of the continental United States. The Director agreed that firm-fixed-price contracts place the burden of risk on the contractor. She also stated that

for firm-fixed-price, level-of-effort contracts, the contractor has to provide only the agreed upon labor hours at the negotiated lump-sum price. Under these contracts, the Director stated that the Government cannot influence the execution of a firm-fixed-price, level-of-effort task order. She stated that labor-hour contracts, with established labor-hour rates and adequate competition, provide a better solution for the CNTPO IDIQ contracts than do firm-fixed-price, level-of-effort, or cost-plus contract types. The Director stated that personnel in her office plan to modify the basic contracts to execute task orders as firm-fixed-price to the greatest extent possible. She stated that she planned to complete the changes by the end of FY 2009.

### ***Our Response***

Although the Director, Contracting and Acquisition Management Office, acknowledged that the CNTPO IDIQ task orders were administered as labor-hour contracts, she did not discuss the specific changes she planned to make to the basic contracts to execute task orders as firm-fixed-price. We request that the Director provide a copy of the changes made to the basic contracts in response to the final report.

**(4) Include an approval document from the head of contracting in the contract files for any task order with firm-fixed-price, level-of-effort requirements that exceed \$100,000.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, did not fully agree. She stated that the CNTPO task orders executed as firm-fixed-price, level-of-effort were administered as labor-hour contracts. The Director stated that the option to award firm-fixed-price, level-of-effort task orders will be removed from the basic contract once SMDC finalizes the terms and conditions of firm-fixed-price task orders.

### ***Our Response***

The Director, Contracting and Acquisition Management Office, did not respond to the recommendation. Specifically, she did not state whether she would complete approval documents for firm-fixed-price, level-of-effort task orders over \$100,000 and instruct contracting officials to include the documents in the contract files. We request that the Director submit comments in response to the final report discussing planned action to implement this recommendation.

**(5) Request that the contractors refund the Government any fee received for commercial items.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, disagreed. She stated that we misunderstood the terms of the CNTPO contracts. The Director stated that the contracts were not categorized as commercial items or services because the preponderance of effort identified in the acquisition strategy did not meet the definition of a commercial item or service. The Director stated that a single task order or group of

task orders may include some commercial items but were not categorized as such. The Director stated that having one element of materials categorized as commercial items in a task order would be similar to characterizing a large requirement as commercial just because it contained a commercially available bolt. She added that the task order requirements must be viewed as a whole and suggested that we delete the section on the acquisition of commercial items from the report. Additionally, the Director stated that there were no rules prohibiting a prime contractor from charging a profit on materials provided by a subcontractor or supplier.

### ***Our Response***

While we acknowledge the comments of the Director, Contracting and Acquisition Management Office, the contractual documents we reviewed do not support her claims. FAR subpart 12.2 requires that agencies use firm-fixed-price contracts to acquire commercial goods; however, SMDC contracting officers used cost-plus-fixed-fee contract line items. The contracting officers purchased such things as ground sensors, replacement parts, laptops, cell phones, and off-road vehicles. These items were available for purchase from the manufacturer or available through the General Services Administration's Federal Supply schedule. DOD paid approximately \$439,000 in fees to CNTPO contractors for items we found to be commercial. We requested that the SMDC contracting officers and CNTPO provide documents to support their claims that these items were not commercial; however, we received no documents. We again request that the Director instruct the contracting officers to initiate actions to get refunds from the contractors for any fees received for commercial items. The Director should include her response in comments on the final report.

**(6) Conduct a review of all task orders to identify any additional fees paid for commercial items, and request that the contractors refund any fee paid for the procurement of commercial items.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, disagreed. She asked that we delete the recommendation from the final report.

### ***Our Response***

As we stated in our response to Recommendation A.2.b.5, SMDC contracting officers did not properly implement the contract to comply with FAR subpart 12.2 to use firm-fixed-price contracts for commercial items. Therefore, the Director should reconsider her position and instruct the SMDC contracting officers to conduct a review of all task orders to identify any additional fees paid for commercial items and request a refund. We request that the Director include her response in comments on the final report.

**(7) Confirm that the Government has adequate contract surveillance plans before awarding any future task orders with cost or cost-plus-fixed-fee contract line items as required by Federal Acquisition Regulation Subpart 16.3, "Cost Reimbursement Contracts."**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed in principle. She stated that the report did not provide evidence of deficiencies in the quality control programs or the cost accounting system of CNTPO contractors. The Director also stated that the contractor's quality control programs were evaluated as part of the source selection process and all systems were found to be adequate. The Director requested that we delete the recommendation from the final report.

### ***Our Response***

We intended for the Director, Contracting and Acquisition Management Office, to confirm that the Government, not the contractor, has adequate surveillance in place before awarding future cost type task orders. Therefore, we revised the recommendation and request that the Director provide comments in response to the final report on the revised recommendation.

**(8) Procure commercial items on a firm-fixed-price basis, as required by Federal Acquisition Regulation Subpart 12.2, "Special Requirements for the Acquisition of Commercial Items."**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, disagreed for the same reasons she disagreed with draft report Recommendation 3.e (Recommendation A.2.b.5). She asked that we delete the recommendation from the final report.

### ***Our Response***

While we acknowledge the Director's comments, we did not find that the contractual documents support her claims. FAR subpart 12.2 requires that agencies use firm-fixed-price contracts to acquire commercial goods; however, SMDC contracting officers used cost-plus-fixed-fee contract line items. The contracting officers purchased such things as ground sensors, replacement parts, laptops, cell phones, and off-road vehicles. These items were available for purchase from the manufacturer or available through the General Services Administration's Federal Supply schedule. We request that the Director reconsider her position and instruct the SMDC contracting officers to use only firm-fixed-price contracts to procure commercial items. We request that the Director include her response in comments on the final report.

**(9) Comply with ordering requirements in Federal Acquisition Regulation Subpart 16.5, "Indefinite-Delivery Contracts," when issuing task orders under indefinite-delivery, indefinite-quantity contracts.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, disagreed. She stated that the recommendation was the same as draft report Recommendation A.3.j and requested that we delete it from the final report.

## ***Our Response***

This recommendation requires that contracting officers comply with FAR subpart 16.5 on future task order awards, whereas draft report Recommendation A.3.j requires that contracting officers modify a specific task order, W9113M-07-D-0006-0004, to comply with the FAR. We request that the Director provide comments in response to the final report indicating whether she plans to require compliance.

**(10) Modify task order W9113M-07-D-0006-0004 to comply with Federal Acquisition Regulation Subpart 16.5, “Indefinite-Delivery Contracts,” and explicitly state in the task order the number of tracking devices needed to meet DOD Counter Narcoterrorism Technology Program Office requirements and the cost of the tracking devices.**

## ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that the contracting officer initially published the task order incorrectly. The Director stated that during the solicitation process the task order requirements were revised, as evidenced in a revised proposal submitted by the contractor. The Director stated, however, that the contracting officer did not revise the performance work statement to reflect the changes. The Director stated that CNTPO has received all the tracking devices required by the task order, which will shortly be closed. The Director added that there is no benefit to modifying the task order as it is essentially complete.

## ***Our Response***

The Director, Contracting and Acquisition Management Office comments indicate that corrective actions were taken, and therefore, no further comments are required.

**(11) Properly exercise contract options and modifications to extend contracts in accordance with Federal Acquisition Regulation Subpart 17.2, “Options,” and Federal Acquisition Regulation clauses 52.217-8, “Option to Extend Services,” and 52.217-9, “Option to Extend the Term of the Contract.”**

## ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She acknowledged that determinations and findings documents to support the exercise of options were not included in the task order files. The Director stated, however, that the actions necessary to exercise an option were executed. She explained that the options exercised were within close proximity of the task order award, limiting the amount of any change in the market conditions for the options exercised. The Director stated that CNTPO and SMDC ensured that there were no changes to the task order requirement before issuing the option. She stated that the report overstated the implications of not providing preliminary notice of the Government’s intent to exercise an option. The Director stated that if the options were not exercised with appropriate notice, the contractor could request a change in the terms of the contract; however, this did not occur. The Director also stated that once the date for exercising a task order passes, as

happened with task order 0004 of contract W9113M-07-D-0005, the Government and the contractor can agree to perform the work in the contract. The Director stated that SMDC plans to include in the task order file proper determinations and findings for options exercised on or after July 1, 2009.

### ***Our Response***

Although the Director, Contracting and Acquisition Management Office, agreed, further action by the Director is required for this recommendation. The Director should document in the contract file for task order 0004 of contract W9113M-07-D-0005 the revised requirements for the tracking devices. We request that the Director provide comments in response to the final report indicating whether she plans to update the contract file.

**(12) Properly identify all Government-furnished property provided to the contractors in the solicitations for task orders as required by the Federal Acquisition Regulation Subpart 45.2, "Solicitations and Evaluation Procedures."**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She acknowledged that contracting officers did not properly identify Government-furnished property by specific make, model, serial number, condition, and date in the task orders. The Director also stated that some items were improperly categorized as Government-furnished property, but were not provided to the contractor. The Director stated that the Government instead granted the contractor periodic access to property managed and maintained by the Government. The Director stated that for task order W9113M-7-D-0005-0005 it was the Government's intent to require the contractor to check out items such as weapons, protective gear, and radios as needed. The Director stated that the task order was subsequently modified and the contractor was required to provide these items when it was determined that the Government would not be able to provide the items.

The Director stated that the contracting office established a formal process to review task orders, which includes using checklists that will assist in identifying Government-furnished property. The Director also stated that additional oversight of property will be included in the COR and technical representatives' surveillance duties. The Director stated that she conducted training with CNTPO to properly identify Government-furnished property and established a formal property management process.

Further, the Director stated that CNTPO initiated a personnel action to hire an individual to perform full-time surveillance of task orders serving the U.S. Central Command area of responsibility. She stated that one project leader had been identified and one to two additional Government personnel were scheduled for deployment. She stated that adequate support would be achieved by the end of calendar year 2009.

## ***Our Response***

The Director, Contracting and Acquisition Management Office comments indicate that corrective actions were taken. However, we request that she provide in response to the final report a copy of the task order checklists for property. We also request that she provide the updated COR and technical representative delegation letter and an outline of the Government-furnished property training. Lastly, we request that the Director provide a copy of the formal property management process she developed.

**(13) Use an approved system to track and maintain the condition and location of all Government-furnished equipment, materials, or property as required by DOD Instruction 5000.64, “Accountability and Management of DOD-Owned Equipment and Other Accountable Property.”**

## ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that to supplement oversight, SMDC and CNTPO implemented a commercial asset management software system to track and store the location and condition of Government-furnished property. The Director stated that, as part of the implementation, a complete inventory of CNTPO property is underway, with completion planned for fourth quarter FY 2009. The Director stated that corrective actions resulting from the inventory have been completed for approximately 60 percent of task orders awarded through May 1, 2009. She stated that she anticipates that corrective action for all task orders will be complete by December 1, 2009. The Director noted that the system will also track Government-furnished property identified in new requirements and task orders beginning fourth quarter 2009.

## ***Our Response***

The Director, Contracting and Acquisition Management Office comments indicate that corrective actions were taken. However, the Director did not specify whether the Government-furnished property system will begin tracking task orders in fourth quarter of fiscal year or fourth quarter calendar year 2009. Therefore, we request that the Director provide a specific date for the operation of the Government-furnished property tracking system in her comments to the final report.

**(14) Formalize an agreement with the Director, Defense Contract Management Agency, to conduct administrative oversight of the task orders issued under the DOD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts and request that the Director:**

**(a) Appoint an administrative contracting officer to perform administrative oversight of the task orders.**

**(b) Appoint a certified property administrator to conduct at least semiannual inventories of all Government-furnished property for task orders.**



### ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that SMDC has initiated discussions with the administrative contracting officers at the Defense Contract Management Agency who would be responsible for overseeing CNTPO task orders. In addition, the Director stated that the contracting office added an additional property administrator to its staffing requirements for FY 2010.

### ***Our Response***

We request that the Contracting and Acquisition Management Office provide in response to the final report a copy of the formal agreement made with the Director, Defense Contract Management Agency, to conduct administrative oversight of CNTPO task orders.

**(15) Obtain the necessary Theater Business Clearance for any task order performed in or involving goods delivered to Iraq or Afghanistan as required by the Under Secretary of Defense for Acquisition, Technology, and Logistics Memorandum, “Retroactive Iraq/Afghanistan Contract Compliance and Assignment of Contract Administration,” December 20, 2007.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that when additional staff are added to support contracting efforts for the CNTPO task orders, the backlog in executing the Theater Business Clearances should be overcome.

### ***Our Response***

The Director, Contracting and Acquisition Management Office, did not fully respond to the recommendation. We request that the Director provide comments in response to the final report indicating a completion date for executing Theater Business Clearance memorandums. Her response should indicate by CNTPO task order the Theater Business Clearance completion date for each.

**(16) Modify the basic contracts to include Theater Business Clearance requirements and all necessary contract clauses as required by the Under Secretary of Defense for Acquisition, Technology, and Logistics Memorandum, “Retroactive Iraq/Afghanistan Contract Compliance and Assignment of Contract Administration,” December 20, 2007.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, disagreed with draft Recommendation A.3.p (now final report Recommendation A.2.b.16) to modify task orders. She stated that including the clauses at the task order level would be redundant. The Director suggested that we revise the recommendation to require that the contracting officers review the basic contracts to ensure that appropriate clauses and contract terms are included as required by the Under Secretary of Defense for Acquisition, Technology, and Logistics Memorandum, “Retroactive Iraq/Afghanistan Contract Compliance and

Assignment of Contract Administration,” December 20, 2007. The Director stated that the contracting office is reviewing the terms of the basic contracts to ensure that the overseas support requirements comply with the memorandum. The Director stated that the review and necessary updates to the basic contracts will be completed before fourth quarter FY 2009.

### ***Our Response***

As a result of management comments, we revised the recommendation. We request that the Director provide comments in response to the final report identifying the specific changes made to the basic contracts for overseas support requirements.

## **Finding B. Contract Surveillance**

SMDC contracting officials and CORs did not conduct adequate contract surveillance for 35 task orders valued at approximately \$98.8 million. Specifically, contracting officials did not develop quality assurance surveillance plans (QASPs) to go along with the performance work statements. Further, CORs did not always accept goods and services or review contractor bills submitted by the CNTPO IDIQ contractors. Lastly, the contracting officer improperly delegated CORs to monitor the task orders. The SMDC contracting officers and CORs did not adequately perform their duties because they were unaware of, misunderstood, or did not follow Federal and DOD procurement regulations. The contracting officials also did not ensure that the CORs were properly trained to conduct contract surveillance. As a result, SMDC contracting officials and CORs cannot provide assurance that they or the requiring activity actually received the goods or services contracted for.

### **Quality Assurance Surveillance Plans**

The SMDC contracting officers and CORs did not perform adequate contract surveillance for any of the 35 task orders reviewed valued at approximately \$98.8 million. DFARS Part 246, “General,” May 12, 2006, requires that DOD Components create and manage a cost-effective and systematic Government quality assurance program, including quality audits of products and services to verify that contract performance is in accordance with the requirements specified in the contract.

Additionally, SMDC contracting officials did not develop overall or individual QASPs for the 35 task orders reviewed. According to FAR Subpart 46.4, “Government Contract Quality Assurance,” March 2005, a QASP should be developed in conjunction with the performance work statement. FAR Subpart 46.4 also states that the QASP should include a description of all work requiring surveillance, location of inspections, and the method for accepting the goods or services. In lieu of a QASP, SMDC contracting officials included a performance requirements summary matrix in each task order. Although the performance requirements summary indicated how SMDC planned to assess contractors performance, it did not include the level of detail required by FAR Subpart 46.4. For instance, the performance requirements summary did not include all of the work requiring surveillance, location of inspections, or the method the Government planned to use to accept the goods or services provided.

Not having a defined QASP before the start of contract performance can result in gaps in contract surveillance and a lack of assurance that services and goods are in accordance with the terms of the contract. Additionally, without a proper QASP, contracting officials have no standards for determining whether supplies or services provided by contractors complied with contractual requirements, and may not be able to stop the waste of Government time and money. SMDC contracting officials should develop a QASP to go along with the performance work statement for each task order before contract performance begins.

SMDC contracting officials acknowledged that they did not develop an overall QASP to assist them in developing a QASP for individual task orders. On February 3, 2009, SMDC contracting officials provided us with an updated QASP that indicated whether the services performed or the goods delivered met contractual requirements. However, the QASP was not approved or dated. Before issuing future task orders under the CNTPO IDIQ contracts, the Director, SMDC Contracting and Acquisition Management Office, should require that contracting officers finalize and approve the overall QASP. It is essential that the contracting officers use the overall QASP when developing individual QASPs for task orders issued under the CNTPO IDIQ contracts.

## **Quality Controls**

CORs did not always use receiving reports to accept goods and services or review charges billed by the contractors. FAR Subpart 46.6 requires that policies and procedures ensure that supplies and services acquired by the Government under a contract conform to the requirements of the contract. Government agencies must ensure that contracts include inspection and quality requirements necessary to protect the Government's best interest.

### ***Accepting Goods and Services***

For 29 of the 35 task orders reviewed, SMDC contracting officers and CORs did not have evidence that goods and services were actually received. FAR Subpart 46.6, "Material Inspection and Receiving Reports," March 2005, requires that agencies prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports to evidence Government inspection. Additionally, DOD Regulation 7000.14-R, "Financial Management Regulation" (DOD FMR), volume 10, "Contract Payment Policy and Procedures," chapter 1, "Financial Control of Vendor and Contract Payments," March 2002, states that DOD has no obligation to pay for goods or services until there is delivery and acceptance.<sup>6</sup> When CNTPO officials accepted the goods or services, they used DD Form 250, "Material Inspection and Receiving Report," as their means of acceptance.

As of November 14, 2008, CNTPO officials had prepared only 16 receiving reports, which corresponded to 6 of the 35 task orders. We discuss the proper use of receiving reports in finding C of this report and make recommendations accordingly.

### ***Reviewing Contractor Bills***

SMDC contracting officers and their CORs did not review contractor bills to ensure that the billings always corresponded to the actual goods and services received. See finding C for a detailed discussion on the review of contractor bills.

---

<sup>6</sup> DOD FMR volume 10, chapter 7, "Prompt Payment Act," July 2002, defines *actual acceptance* as a formal certification that the goods or services have been received and that they conform to the terms of the contract. This usually occurs after the completion of any necessary testing and inspection allowed by the contract and is documented by the receiving activity.

## **Designation and Training of CORs**

We identified 10 CORs for the CNTPO IDIQ contracts, 2 were designated and 8 were acting as CORs. According to DFARS Subpart 201.6, “Career Development, Contracting Authority and Responsibilities,” April 23, 2008, CORs assist in the technical monitoring or administration of a contract. For the 35 task orders reviewed, we determined that the task order monitors performed the same duties as CORs. In light of their duties, we determined that the task order monitors should be held to the same standards as CORs. For purposes of this report, we will refer to task order monitors as CORs.

### ***COR Designations***

According to DFARS Subpart 201.6, a COR must be a Government employee, qualified by training and experience commensurate with the responsibilities delegated in accordance with Department or agency guidelines. DFARS 201.602-2, “Responsibilities,” also states that COR responsibilities must be in writing and that the responsibilities cannot be redelegated. For that reason, the contracting officer is expected to appoint a properly trained COR.

The SMDC contracting officers designated a COR and an alternate COR for the CNTPO IDIQ contracts. However, for 10 of the 35 task orders reviewed, SMDC contracting officers did not designate a COR in writing. For 24 of the 25 remaining task orders, 1 COR redelegated his contract monitoring functions to 8 other CORs although the COR appointment letter explicitly prohibits redelegating this authority. According to the COR, SMDC contracting officials told him to do so. Furthermore, SMDC contracting officials stated that they did not review or approve the COR redelegations before the task orders began. SMDC contracting officials should review these COR redelegations to ensure that they meet Federal and DOD requirements. Contracting officials should also designate all CORs before the start of contract performance.

### ***COR Training***

DFARS Subpart 201.6 states that a COR must have the necessary training and experience. According to a Director of Defense Procurement and Acquisition Policy Memorandum, “Designation of Contracting Officer’s Representatives on Contracts for Services in Support of Department of Defense Requirements,” December 6, 2006, a COR must be properly trained before being appointed. According to the Office of Management and Budget Memorandum, “The Federal Acquisition Certification for Contracting Officer Technical Representatives,” November 26, 2007 (Federal COR certification program), all CORs appointed to a contract after the effective date of the memorandum must be certified no later than 6 months from their date of appointment. The Federal COR certification program established competency-based core training and assignment-specific training to achieve and maintain the COR certification. Once certified, CORs must maintain their contracting skills and knowledge through continuous learning. After review of the training documentation submitted by the CORs for the CNTPO IDIQ contracts, we determined that the 10 CORs did not meet those training and certification requirements.

According to the DOD Panel on Contracting Integrity's "2008 Report to Congress," DOD officials are in the process of developing the first standard DOD COR certification program. The SMDC contracting officers should require that CORs complete the COR certification program established by the Office of Management and Budget until DOD officials finalize their program. SMDC contracting officers must ensure that properly trained CORs are designated for contracts before contract performance begins. SMDC contracting officers should implement the Federal COR certification program to ensure that CORs stay current in their functional areas. Additionally, SMDC contracting officers need to designate CORs that meet the Federal COR certification program requirements.

## **Summary**

Because of insufficient Government surveillance, there is no assurance that the Government received all goods and services purchased, worth approximately \$98.8 million. SMDC contracting officers did not conduct adequate contract surveillance for the 35 task orders reviewed. SMDC contracting officials also did not implement an individual QASP or appoint trained CORs for each task order. Further, SMDC contracting officers and CORs did not appropriately accept goods and services purchased. The SMDC contracting officers and CORs did not adequately perform their duties because they were unaware of, misunderstood, or did not follow Federal and DOD procurement regulations

## **Management Actions Taken**

On November 4, 2008, after we began our audit, SMDC contracting officials created a new SMDC COR policy and COR designation form for the CNTPO IDIQ contracts. According to the new COR policy, contracting officers will designate a properly trained COR before contract performance begins for service-related contracts and ensure that a QASP is prepared and implemented. The new policy also allows the contracting officer to delegate a technical representative to assist the COR with contractor surveillance, and requires the technical representative to comply with the same training requirements as the COR. However, the new COR policy allows the Commander of SMDC to waive the requirements of the policy as long as the Commander documents the rationale supporting the waiver.

## **Management Comments on the Finding and Our Response**

### ***Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats Comments***

The Principal Director for Counternarcotics and Global Threats, commenting for the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats, disagreed with the conclusion. He stated that his office independently initiated procedures to account for all the equipment it funded. The Principal Director stated that in June 2008, the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats issued a memorandum directing end-use-monitoring of DOD counternarcotics equipment issued to foreign nations through the end of FY 2007. The Principal Director

stated that the monitoring would include a 100-percent inventory of all night vision devices and weapons, with confirmation that the equipment is being stored and controlled properly. The Principal Director stated that the results of the review were included in his response to the draft report.

### ***Our Response***

Although we commend the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats for initiating a review of all equipment funded by his office, the contracting officer is responsible for ensuring property accountability. FAR subpart 45.2 requires that contracting officers identify all Government-furnished property anticipated in all solicitations. The property listing should include name, description, manufacturer, model number, national stock number (if applicable), quantity, unit acquisition cost, and a unique item identifier. Of the 35 task orders reviewed, 8 task orders contained Government-furnished property. However, the contracting officers either did not maintain any property records or they did not maintain complete property records for CNTPO property in the contract files. In her comments, the Director, Contracting and Acquisition Management Office, stated that efforts are underway to compile a complete listing of all Government-furnished property for CNTPO task orders. We request that the Principal Director provide the Director, Contracting and Acquisition Management Office, a copy of the end-use-monitoring report to assist in her review.

## **Recommendations, Management Comments, and Our Response**

### ***Revised Recommendation***

Based on comments from the Director, Contracting and Acquisition Management Office, we revised Recommendation B.2 to eliminate confusion in regards to the intent of the Recommendation.

**B. We recommend that the Director, U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office, require that contracting officers:**

**1. Develop and implement a systematic Government quality assurance program for the task orders issued under the DOD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts as required by Defense Federal Acquisition Regulation Supplement Part 246, “General.”**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that the contracting office worked with CNTPO and developed a comprehensive quality assurance program. The Director stated that the basic quality assurance hierarchy includes the employment of contracting officers, contract specialists, CORs, contracting officer technical representatives, and subject matter experts. The Director stated that the



contract specialists and technical representatives responsible for day-to-day contract administration and quality assurance would support the contracting officers and CORs. The Director said that subject matter experts would support the technical representatives in the functional areas. She stated that the team would be fully constituted no later than second quarter 2010.

### ***Our Response***

The Director, Contracting and Acquisition Management Office, did not fully respond to the recommendation. Although the Director recognized that additional personnel resources were needed to implement a comprehensive assurance program, she did not explain how she planned to implement quality audits as part of the program or who would conduct the audits. She also did not explain the processes and procedures she planned to include in a quality audit. Quality audits are required by DFARS part 246 to ensure that the quality of products and services meet contractual requirements. We request that the Director provide comments on the final report describing the implementation of quality audits in the comprehensive quality assurance program, and processes and procedures that would be followed when conducting an audit.

**2. Finalize and approve the overall quality assurance surveillance plan for the DOD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that the contracting office developed a contract-level QASP and shared it with the audit team. The Director stated that the contract-level QASP meets the requirements of FAR subpart 46.6. She also stated that task orders awarded after October 1, 2009, would include task order surveillance plans that contain a performance requirements summary and comprehensive information that addresses when surveillance will take place and by whom. The Director also stated that contracting officer technical representatives will develop monthly reports to show progress on tasks. The Director stated that the systemic changes were planned for no later than first quarter 2010.

### ***Our Response***

The Director, Contracting and Acquisition Management Office, did not fully respond to the recommendation. While the contracting office did provide a copy of a contract-level QASP, the plan was unsigned. We request that the Director provide in response to the final report an approved, signed, and dated copy of the contract-level QASP.

**3. Implement an individual quality assurance surveillance plan for each task order as required by Federal Acquisition Regulation Subpart 46.4, "Government Contract Quality Assurance."**

## ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She also suggested that we delete draft report Recommendation B.3, which she believed was included as part of Recommendation B.2.

## ***Our Response***

The Director, Contracting and Acquisition Management Office, did not fully respond to the recommendation. The Director stated in her comments to Recommendation B.2 that task orders awarded after October 1, 2009, would include task order surveillance plans that include a performance requirements summary and comprehensive information on when surveillance will take place and by whom. However, the Director did not state whether task order surveillance plans would comply with all of the requirements in FAR Subpart 46.4. Specifically, she did not state whether the plan identified the work requiring surveillance, the location of the inspections, or the method the Government planned to use to accept the goods or services provided. If the Director includes the additional details in task order surveillance plans, she will have met the intent of this recommendation.

As a result of comments from the Director, Contracting and Acquisition Management Office, we revised this recommendation. As a result, we ask that the Director provide comments in response to the final report on the revised recommendation.

**4. Designate in writing a properly trained contracting officer's representative for each task order in accordance with Defense Federal Acquisition Regulation Supplement Subpart 201.6, "Career Development, Contracting Authority, and Responsibilities."**

## ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She acknowledged that the contracting officers improperly instructed the CORs to designate task order monitors, constituting a subdelegation of their authority. The Director stated that the contracting office has delegated COR authority to CNTPO personnel who have overall responsibility for all task orders awarded. The Director stated that the contracting office is currently delegating contracting officer technical representative authority, at the task order level, to individuals who will conduct surveillance and inspection of the task orders.

## ***Our Response***

The Director, Contracting and Acquisition Management Office comments indicate that corrective actions were taken, and therefore, no further comments are required.

**5. Require that contracting officer's representatives comply with the Office of Management and Budget's contracting officer's representative certification program until DOD officials establish a standard DOD contracting officer's representative certification.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that the contracting office now requires that CNTPO submit a written nomination and evidence of training completed or scheduled for a COR and technical representative when submitting contract requirements. The Director stated that CNTPO is also required to include standards and objectives in the performance plans for CORs and technical representatives for the effective, efficient, and timely execution of their duties.

### ***Our Response***

The Director, Contracting and Acquisition Management Office comments indicate that corrective actions were taken, and therefore, no further comments are required.

**6. Remove the waiver from the Army Space and Missile Defense Command Contracting Officer Representative policy issued on November 4, 2008, that allows the Commander, Army Space and Missile Defense Command, to appoint to DOD contracts contracting officer representatives who are not trained in accordance with Federal or DOD policy.**

### ***Management Comments***

The Director, Contracting and Acquisition Management Office, disagreed. She stated that the SMDC COR policy is based on requirements established by the Office of the Secretary of Defense and the Office of the Assistant Secretary of the Army and procedures established by SMDC. The Director stated that the waiver was included in the SMDC COR policy for unique circumstances that may require the Commander to grant a waiver. The Director stated that the policy is clear that the waiver request must be documented and include specific information.

### ***Our Response***

We acknowledge the comments of the Director, Contracting and Acquisition Management Office, but note that DOD policy does not allow DOD Components to waive training requirements when appointing CORs to oversee DOD contracts. Absent such authority, the SMDC COR policy has no valid basis for a waiver. Accordingly, the Director should remove the waiver from the SMDC COR policy. We request that she provide additional comments in response to the final report.

## Finding C. Contractor Billing

SMDC and CNTPO officials did not ensure that the contractors were fully entitled to the \$47.9 million paid on the CNTPO IDIQ task orders. DOD officials did not determine the contractors' entitlement to payment because SMDC contracting officials did not require that CORs review contractor bills. Additionally, the SMDC contracting officer failed to formalize an agreement with Defense Contract Management Agency officials to certify that goods and services billed by the contractors were received. As a result, DOD officials paid the CNTPO IDIQ contractors for goods and services that may not have been allowable or reasonable. Additionally, the contracting officers may have erroneously included about \$346.2 million in other direct costs, roughly 34 percent of the total value of task orders as awarded through March 12, 2009.

### Billing and Payment Entitlement

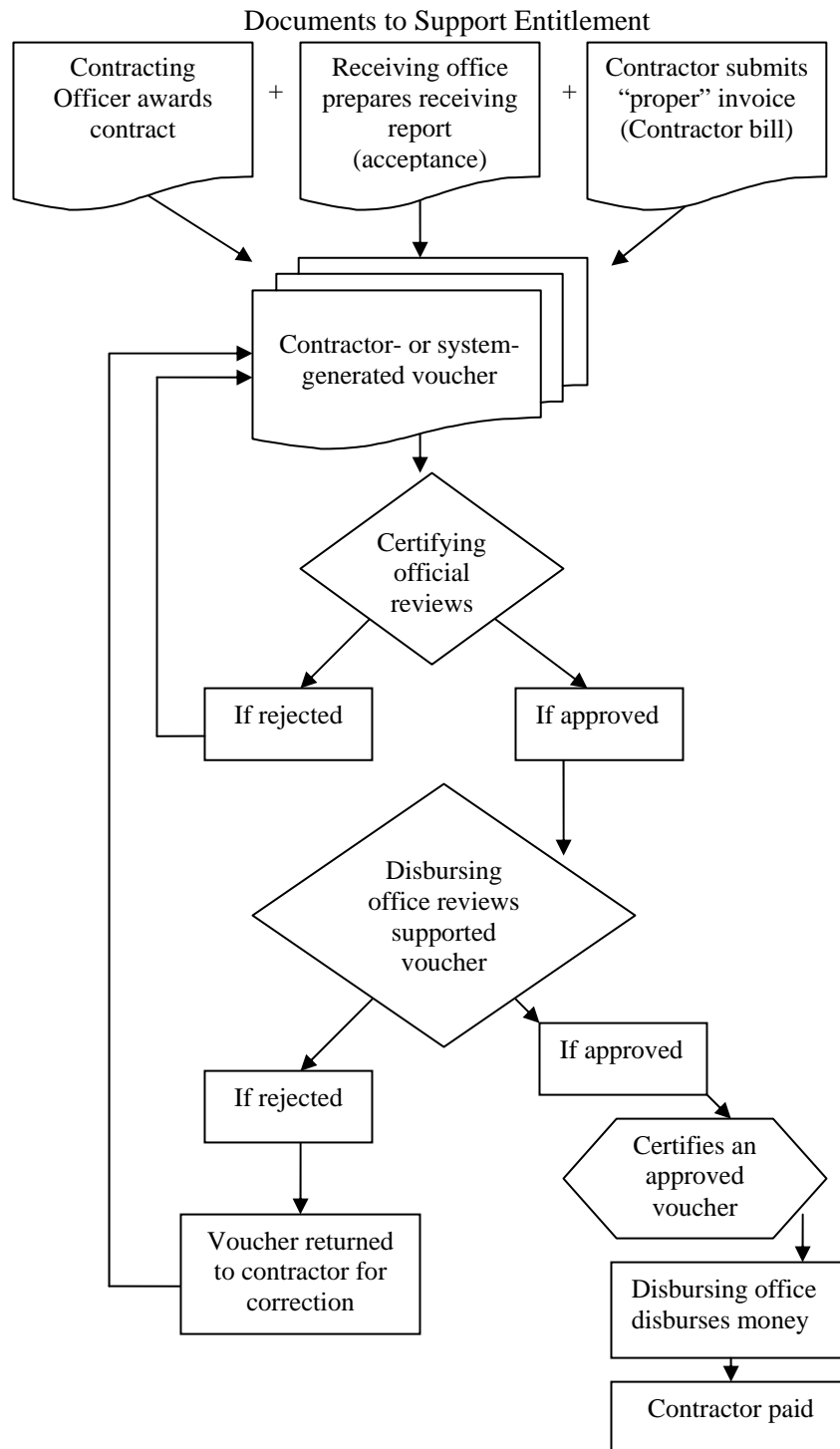
FAR 31.2, "Contracts with Commercial Organizations," August 17, 2007, states that expenses billed to the Government are limited to costs that are allowable, allocable, and reasonable. DOD FMR volume 10, chapter 1 states that payment cannot be made without determining entitlement to the payment. Further, receipt of a "proper"<sup>7</sup> invoice, proof of receipt, and acceptance,<sup>8</sup> as well as the contract terms and conditions, determine entitlement. According to the DOD FMR, volume 10, chapter 7, "Prompt Payment Act," July 2002, a disbursing office must be provided supporting documents as evidence that the payment is legal. The supporting documents normally consist of a contract, invoices from contractors, and a receiving report completed by the offices receiving the property or service. According to the DOD FMR volume 10, chapter 8, "Commercial Payment Vouchers and Supporting Documents," May 2008, a contractor is "entitled" to payment when the contracting officer issues a contract, prepares a receiving report, and approves the invoice a contractor submits for payment. The following diagram depicts the billing and payment process according to the DOD FMR.

---

<sup>7</sup> According to FAR 52.232-25(a)(3), "Prompt Payment," October 2008, an invoice is considered "proper" when it contains, the name and address of the contractor; invoice date; contract number; and description, quantity, and unit price and measure of supplies delivered or services performed.

<sup>8</sup> Acceptance means an authorized Government official acknowledges that goods and services received conform to contract requirements.

## Proper DOD Billing and Payment Process



## **Contractor Bills**

SMDC and CNTPO officials did not ensure that the contractors were fully entitled to the \$47.9 million paid on 19 of the 35 CNTPO IDIQ task orders. Specifically, SMDC contracting officers did not ensure that contractors submit proper public vouchers (contractor bills). The overall IDIQ contracts require only that the contractors include the order number, the words “CNTPO Contract,” and the accounting classification number on public vouchers they submit. According to DOD FMR, volume 10, chapter 8, a voucher is the contractor’s bill or written request for payment under the contract for the services or supplies provided. A voucher is considered proper when it contains, among other things, a description, quantity, and price of the supply or service being performed. For purposes of this report, we will refer to public vouchers as contractor bills.

The 4 contracting officers and 10 CORs assigned to monitor the CNTPO IDIQ task orders did not review contractor bills to ensure that they contained a description, quantity, and price of performance. Additionally, neither the contracting officers nor the CORs required the contractors to provide supporting documents that described the amounts they billed for labor categories and rates, travel, materials, and other direct costs. For instance, one bill sent to the Government indicated that the contractor provided “material” for approximately \$1.3 million but did not describe or list the material provided. Another contractor bill sent to the Government indicated that the contractor had approximately \$112,500 of travel expenses without describing or itemizing the travel being claimed.

When asked, the majority of the CORs stated that they did not always review the contractor bills or keep copies of the bills for the task orders they monitored. The CORs stated that they limit their review of contractor-incurred expenses to monthly expenditure and progress reports submitted by the contractors. However, the contractors’ reports did not contain enough information to determine whether the expenses had been incurred. CORs also stated that their reviews of the reports consisted of “eyeballing” to verify that the amounts were “in the ballpark,” under the authorized limits identified by the contract. Lastly, CORs further stated that they did not review any travel expenses. The CORs’ cursory reviews of the bills submitted by the contractors may have caused the Government to waste millions of dollars by paying for goods and services the Government has not received.

Consequently, SMDC contracting officers and their CORs allowed contractor payments of approximately \$47.9 million without always reviewing the contractor bills to determine whether costs were allowed by the task orders. The contracting officers must require that CORs review contractor bills before approving them for payment to ensure the amounts are allowed by the CNTPO IDIQ task orders. Additionally, contracting officers should instruct the CORs to review accompanying documentation supporting costs billed to DOD, or request such documentation if necessary. The contracting officer should modify the CNTPO IDIQ contracts to require that the contractors submit bills (public vouchers) to the Defense Contract Audit Agency for processing. The Defense Contract Audit Agency should review all contractor bills in accordance with their procedures. SMDC contracting officers should also require that CORs review the contractor bills instead of the contractor-provided monthly expense reports to determine

whether the contractors are submitting allowable, allocable, and reasonable costs to the Government.

### ***Acceptance of Goods and Services***

SMDC contracting officials did not verify, document, or have an agreement with the Defense Contract Management Agency officials to certify that goods and services billed by the contractors were received. DOD FMR volume 10, chapter 7, requires that the office receiving goods or services complete a receiving report as formal acceptance that the Government was satisfied with the contractor's performance. The acceptance period should be specified in the contract.

For only 6 of the 19 task orders that had payments, CORs completed a DD Form 250, a receiving report, as written evidence that they were satisfied with the supplies delivered or the services provided. For the remaining 13 task orders, the CORs did not verify or document that the receiving office was satisfied with the goods and services provided from the contractor. Also, neither the overall CNTPO IDIQ contracts nor the task orders established the acceptance period. The contracting officials initially told us that the Defense Contract Management Agency officials reviewed and maintained the contractors' bills for the 35 task orders we reviewed. However, Defense Contract Management Agency officials did not have a formal agreement with the SMDC contracting officers to perform oversight of the CNTPO IDIQ contracts. Additionally, a Defense Contract Management Agency official stated that since the contracting officers authorized the contractors to bill the Government directly, these contracts functioned as "blank checks" for the contractors.

The SMDC contracting officers should modify CNTPO contracts to establish a period of acceptance for goods and services. The contracting officers should also require that CORs complete a DD Form 250 when they accept services or as contractors complete work on task orders. Without proper acceptance of a good or service and a proper invoice, DOD should not be authorizing payments to contractors that may not be allowed.

### **Other Direct Costs**

Although a review of other direct costs was outside the scope of our audit, we found that SMDC contracting officers included significant amounts of other direct costs when awarding task orders to CNTPO IDIQ contractors. Defense Contract Audit Agency Manual 7640.1, "Contract Audit Manual," chapter 9, "Audit of Cost Estimates and Price Proposals," December 31, 2008, defines "other direct costs" as expenses other than direct material or labor costs.

As of March 12, 2009, SMDC contracting officers issued 80 task orders worth approximately \$1.2 billion. See tables in Appendix A for more on task orders issued. Of the 80 task orders, 60 (potentially worth approximately \$1 billion) contained potential other direct costs of approximately \$346.2 million, which is about 34 percent of the total

potential task order value.<sup>9</sup> See Table 1 for the total number of task orders with other direct costs that were awarded under cost-plus-fixed-fee contract line items.

**Table 1. Contracts and Their Other Direct Costs**

<b>Contract Number</b>	<b>Contractor</b>	<b>Task Orders</b>	<b>Other Direct Costs (in millions)</b>	<b>Potential Amount (in millions)</b>
W9113M-07-D-0005	Blackwater	15	\$131.9	\$444.2
W9113M-07-D-0006	Lockheed Martin	20	41.0	136.8
W9113M-07-D-0007	TASC	16	118.5	320.8
W9113M-07-D-0008	Raytheon	9	54.7	104.4
W9113M-07-D-0009	ARINC	0	N/A	N/A
<b>Total</b>		<b>60</b>	<b>\$346.2*</b>	<b>\$1,006.2</b>

N/A indicates not applicable.

\* Numbers do not equal the total because of rounding.

The lack of contract management, surveillance, and billing oversight, discussed above, leads us to believe that there is a high potential for other direct costs to be erroneously charged to the Government. Therefore, we recommend that the Director, Defense Contract Audit Agency, conduct a review of all contractor bills submitted under the CNTPO IDIQ contracts.

## Conclusion

DOD may have paid CNTPO IDIQ contractors for goods and services that were not allowable, allocable, or reasonable. Additionally, the contracting officers may have erroneously included about \$346.2 million of unspecified total other direct costs, which is approximately 34 percent of the total value of task orders. To ensure adequate oversight of contractor bills and payments, the Director, Defense Contract Audit Agency, should review all contractors bills (public vouchers) and conduct a cost audit to include the other direct costs and any time-and-materials or labor-hour contract line item charges submitted under the CNTPO IDIQ contracts. See Finding A for a discussion on time-and-materials and labor-hour contract line items found in the CNTPO IDIQ contracts.

---

<sup>9</sup> We considered the potential task order value to be the amount of the task order plus any options that the contracting officer could exercise.



## **Management Comments on the Finding and Our Response**

### ***Director, Contracting and Acquisition Management Office, Comments***

The Director, Contracting and Acquisition Management Office, disagreed with statements in the report about other direct costs. She stated that the high value of other direct costs typically indicates that the contractor's accounting practice is to include supplier services as other direct costs. The Director stated that the Defense Contract Audit Agency conducts audits of all costs incurred upon task order completion and recommends to the contracting officer costs that the agency finds are not allocable or allowed and are improperly or overstated.

### ***Our Response***

As stated in the draft report, we identified material weaknesses in the management, billing, and surveillance of the CNTPO task orders reviewed. We were especially concerned that the SMDC contracting officers and CNTPO CORs did not conduct proper surveillance or review or maintain contractor bills. For the few bills we did obtain, the level of detail in the bills and the lack of supporting documents was not sufficient to determine whether the contractor was entitled to payments received. While we agree that the Defense Contract Audit Agency conducts incurred-cost audits, the audits do not negate the contracting officer's important surveillance responsibilities for CNTPO task orders. Based on this, we believe the statements made in the draft report on our concerns about the potential questionable charges for other direct costs were justified.

## **Recommendations, Management Comments, and Our Response**

**C.1. We recommend that the Director, Defense Contract Audit Agency:**

**a. Include public vouchers submitted under the DOD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts as part of its review of public vouchers in accordance with the procedures identified in the Defense Contract Audit Agency Manual 7640.1, "Contract Audit Manual."**

### ***Defense Contract Audit Agency Comments***

The Assistant Director for Policy and Plans, commenting for the Director, Defense Contract Audit Agency, agreed. He stated that the Defense Contract Audit Agency would include public vouchers submitted under the narcoterrorism program contracts as part of its next review of public vouchers. The Assistant Director stated that the public voucher reviews would be performed in accordance with the Defense Contract Audit Manual.

## ***Our Response***

The Assistant Director for Policy and Plans, Defense Contract Audit Agency comments indicate that corrective actions were taken, and therefore, no further comments are required.

**b. Conduct a cost audit of the DOD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quality contracts to include the other direct costs and any time-and-materials or labor-hour contract line items.**

## ***Defense Contract Audit Agency Comments***

The Assistant Director for Policy and Plans, commenting for the Director, Defense Contract Audit Agency, agreed. He stated that the Defense Contract Audit Agency would perform incurred-cost audits of the narcoterrorism contracts. The Assistant Director stated that incurred-cost audits would be in accordance with the requirements in the Defense Contract Audit Agency Manual.

## ***Our Response***

The Assistant Director for Policy and Plans, Defense Contract Audit Agency comments indicate that corrective actions were taken, and therefore, no further comments are required.

**C.2. We recommend that the Director, U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office, require that the contracting officers:**

**a. Modify the DOD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts to:**

**(1) Require that the contractors submit payment requests for labor, material, and other direct costs on public vouchers to the Defense Contract Audit Agency for processing.**

**(2) Include the acceptance period for goods and services that contractors deliver.**

**(3) Require that the contractors provide detailed cost documentation and information in contractor bills as required by DOD Regulation 7000.14-R, "Financial Management Regulation," volume 10, "Contract Payment Policy and Procedures," chapter 8, "Commercial Payment Vouchers and Supporting Documents."**

## ***Director, Contracting and Acquisition Management Office, Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that her office, the administrative contracting officers, and Defense Contract Audit Agency

officials confirmed that CNTPO contractors now submit requests for payment in Wide Area Work Flow. The Director stated that all three parties permit the contractors to submit 2-in-1 invoices whereby the acceptance of requests for payment are scanned into Wide Area Work Flow as evidence of payment. The Director stated that she planned to modify the basic contracts to include additional billing information and direction for submitting supporting details for payment.

### ***Our Response***

Further action by the Director, Contracting and Acquisition Management Office, is necessary on this recommendation. The Director must ensure that either the COR or the contractor attaches receiving report(s) to the corresponding contractor bill(s) in Wide Area Work Flow. This process should facilitate sound Government contract surveillance over the contractor bills and allow the Defense Contract Audit Agency to review the bills CNTPO contractors submit to DOD for payment. We request that the Director provide comments in response to the final report stating whether she will require that the COR or contractor attach receiving reports to corresponding contractor bills in Wide Area Work Flow. We also request that the Director include in her response a copy of the changes she made to the basic contracts for billing.

**b. Require that contracting officer's representatives review and approve contractor bills and supporting documentation before authorizing payment, to ensure that the bills are commensurate with contract performance.**

### ***Director, Contracting and Acquisition Management Office, Comments***

The Director, Contracting and Acquisition Management Office, agreed. She stated that the requirement for CORs to approve contractor bills before authorizing payment has been a requirement since the program began. The Director stated that reinforcement of the requirement has been included in the COR and technical representative designation letters and in remedial training.

### ***Our Response***

The Director, Contracting and Acquisition Management Office comments indicate that corrective actions were taken, and therefore, no further comments are required.

**c. Require that contracting officer's representatives or officials with the receiving activity properly accept all goods and services provided by the contractors through the use of receiving reports or their equivalents in accordance with Federal Acquisition Regulation Subpart 46.4, "Government Contract Quality Assurance," and DOD Regulation 7000.14-R, "Financial Management Regulation" volume 10, "Contract Payment Policy and Procedures," chapter 1, "Financial Control of Vendor and Contract Payments."**

### ***Director, Contracting and Acquisition Management Office, Comments***

The Director, Contracting and Acquisition Management Office, agreed. She reiterated her response to Recommendation C.2.b that CORs' use of receiving reports to accept goods and services for CNTPO task orders was included in the COR and technical representative designation letters and in remedial training. The Director stated that the CORs and technical representatives will also be required to certify in Wide Area Work Flow that they accepted the goods and services.

### ***Our Response***

The Director, Contracting and Acquisition Management Office, did not fully respond to the recommendation. In January 2009, SMDC contracting officials provided us with an updated COR designation letter; however, the letter did not explicitly require the use of a DD Form 250 or equivalent to accept goods and services for CNTPO task orders. We request that the Director update the COR designation letter to explicitly require CORs to use a DD Form 250 or equivalent and provide us a copy when completed.

### ***Defense Contract Audit Agency Comments***

Although not required to comment on the recommendation, the Assistant Director for Policy and Plans, commenting for the Director, Defense Contract Audit Agency, stated that his agency was aware of at least one instance when the labor-hour contract line items were billed and paid using a receiving report that was not processed by the Defense Contract Audit Agency. The Assistant Director stated in his comments to Recommendation C.1 that not all labor costs are currently charged on the bills submitted for payment and that the contractor is incorrectly labeling some contract line items as firm-fixed-price. The Assistant Director suggested that we add a recommendation to this report requesting that the contracting officers require the CNTPO contractors to submit bills for labor, material, and other direct costs on public vouchers to the Defense Contract Audit Agency for review and provisional approval.

### ***Our Response***

We acknowledge the concerns of the Assistant Director for Policy and Plans, Defense Contract Audit Agency. We believe that if the Director, Contracting and Acquisition Management Office, complies with Recommendation C.2.a, by requiring contractors to submit payment requests that include detailed costs and supporting documents, the Defense Contract Audit Agency will have cognizance to review CNTPO task orders, and its review of contractor bills for the CNTPO contracts will not be hindered.

## Finding D. Potential Antideficiency Act Violations

SMDC contracting officials and CNTPO officials did not comply with appropriations law and regulations. We identified four potential Purpose Statute violations, which could result in Antideficiency Act violations valued at approximately \$20.5 million. SMDC contracting officials and CNTPO officials may have violated the Purpose Statute by exceeding the statutory limitation for using Operation and Maintenance appropriations on two task orders for unspecified minor military construction projects. SMDC contracting officials and CNTPO officials also potentially violated the Purpose Statute on two task orders by using the Research, Development, Test, and Evaluation (RDT&E) appropriation to procure commercial items that did not require either a significant modification or independent testing before operational use. These potential violations occurred because SMDC contracting officials and CNTPO officials misinterpreted, or did not follow appropriations law and regulations. As a result of improperly using appropriations and not adhering to statutory limitations established by Congress, SMDC and CNTPO officials may have circumvented legislative control of the public purse.

### Appropriations Law and Regulations

The Antideficiency Act is codified in section 1301, title 31, United States Code (31 U.S.C. 1301), and in other sections.<sup>10</sup> The purpose of the Antideficiency Act is to enforce the constitutional budgetary powers of Congress with respect to the purpose, time, and amount of expenditures made by the Federal Government. Specifically, 31 U.S.C. 1301—the Purpose Statute—states that an appropriation must be applied to objects that the appropriations were made for, except as otherwise provided by law. In addition, 31 U.S.C. 1341 states that an officer or employee of the U.S. Government may not authorize an amount that exceeds the expenditure or appropriation threshold. SMDC contracting officials and CNTPO officials did not comply with appropriations law and regulations. We identified four potential Purpose Statute violations, which could result in Antideficiency Act violations valued at approximately \$20.5 million.

### *Operation and Maintenance Funds for Construction Projects*

United States Code (10 U.S.C. 2805) states that a military construction project<sup>11</sup> equal to or less than \$1.5 million is called an “unspecified minor military construction project.” However, if the military construction project is solely intended to correct a deficiency that threatens life, health, or safety, the unspecified minor military construction project may be approved in an amount equal to or less than \$3 million. However, 10 U.S.C. 2805

---

<sup>10</sup> DOD FMR, volume 14, “Administrative controls of Funds and Antideficiency Act Violations,” chapter 2, “Violations of the Antideficiency Act,” August 2006, states that the following sections of the United States Code constitute the Antideficiency Act: 31 U.S.C. 1301, 31 U.S.C. 1341, 31 U.S.C. 1342, and 31 U.S.C. 1517.

<sup>11</sup> A military construction project, as defined by 10 U.S.C. 2801, includes all military construction necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility.

states that the Operation and Maintenance appropriation may be used only for unspecified minor military construction projects that do not cost more than \$750,000—or \$1.5 million, if they are solely intended to correct a deficiency that threatens life, health, or safety. According to DOD FMR volume 14, chapter 2, a potential Antideficiency Act violation occurs when obligations are authorized or incurred or expenditures are made in excess of the statutory limitations imposed on the use of Operation and Maintenance appropriation for unspecified minor military construction. Therefore, any military construction project costing more than \$1.5 million should be appropriately budgeted for and funded with the Military Construction appropriation.

### ***DOD Directive-type Memoranda***

The Assistant Secretary of Defense for Special Operations /Low-Intensity Conflict (ASD[SO/LIC]) Memorandum, “Unspecified Minor Military Construction Projects Pursuant to Section 1004,” November 21, 2005, states that the Secretary of Defense may establish and operate base(s) of operations or training facilities to facilitate counterdrug activities. The ASD(SO/LIC) memorandum also states that:

a cost ceiling of \$1.5 million applies to each unspecified minor military construction project undertaken with Operation and Maintenance funds appropriated for drug interdiction and counterdrug activities . . . . A single project may not be split into increments in order to stay within the \$1.5 million cost cap. Generally, if two planned projects are “interdependent,”<sup>12</sup> they must be carried out as a single project. Projects that are merely “interrelated”<sup>13</sup> may be carried out as separate projects, subject to the requirement that each project results in a complete and usable facility.

Dividing a single military construction project into increments to keep the cost below the Operation and Maintenance appropriation threshold is contrary to Congress’s intent in imposing the statutory limitation in 10 U.S.C. 2805. Additionally, DOD Instruction 5025.01, “DOD Directives Program,” October 28, 2007, requires that the heads of Defense Components incorporate all DOD Directive-type memoranda into an existing or new DOD issuance, reissue them, or cancel them within 180 days of publication. For DOD Directive-type memoranda issued before the date of the ASD(SO/LIC) memorandum, the Component is required to take action within 180 days of the date of the memorandum. However, the ASD(SO/LIC) did not incorporate his memorandum—a DOD Directive-type memorandum—into an existing or new DOD issuance, reissue it, or cancel it within 180 days. Therefore, the ASD(SO/LIC) should cancel the unspecified minor military construction memorandum and issue a new DOD policy as required by DOD Instruction 5025.01, as well as comply with 10 U.S.C. 2805.

To avoid further potential Antideficiency Act violations, SMDC contracting officials should postpone issuance of new task orders and stop performance on military

---

<sup>12</sup> Interdependent facilities are mutually dependent in performing functions for which they are constructed; the facilities must be funded as a single project subject to the \$1.5 million cost limitation.

<sup>13</sup> Interrelated facilities support a common purpose but are not mutually dependent; therefore, the facilities must be funded as separate projects each subject to the \$1.5 million cost limitation.

construction task orders costing more than \$1.5 million with the Operation and Maintenance appropriation. Meanwhile, the ASD(SO/LIC) should budget for and request from Congress Military Construction appropriation to complete current and future military construction projects.

We identified two task orders for construction in Afghanistan and Pakistan: W9113M-07-D-0005-0002 and W9113M-07-D-0007-0006. CNTPO officials required construction either to improve existing facilities or to create new facilities that would assist in deterring narcoterrorists. However, the military construction projects exceeded statutory limits for the use of the Operation and Maintenance appropriation.

### **Task Order W9113M-07-D-0005-0002**

On September 28, 2007, SMDC contracting officials issued a task order to enhance the capability of the Frontier Corps along the Pakistan and Afghanistan border. According to the task order, the Frontier Corps conducts monitoring, interdiction, and security missions along the Pakistan/Afghanistan border to target narcoterrorists and other terrorist threats. Specifically, the task order will enhance the Frontier Corps Training Center (training center) and two Border Surveillance Centers (surveillance centers) by improving or creating the facilities and structures. SMDC contracting officials and CNTPO officials established nine military construction projects under one task order, with each building as a separate contract option. CNTPO officials funded the military construction projects, worth approximately \$17.1 million, with the FY 2007 Department of the Army, Navy, and Air Force Operation and Maintenance appropriations. See Table 2 for a list of the nine buildings constructed.

**Table 2. Construction Projects for Task Order W9113M-07-D-0005-0002**

<b>Task Order Option</b>	<b>Description</b>	<b>Location</b>	<b>Amount (in millions)</b>
Basic	Barracks – Pakistani Forces	Pakistan	\$3.2
Option A	Dining Facility	Pakistan	1.6
Option C	Instructors’ Quarters	Pakistan	1.8
Option D	Training Center	Pakistan	1.2
Option E	Headquarters Facility	Pakistan	1.4
Option H	Barracks – Afghan Forces	Pakistan	1.8
Option J	Barracks – Coalition Forces	Pakistan	1.8
Option G	Surveillance Center	Afghanistan	1.9
Option I	Surveillance Center	Afghanistan	1.9
Fixed Fee			0.4
<b>Total</b>			<b>\$17.1*</b>

\* Amounts do not equal the total because of rounding.

Although officials established nine military construction projects, there were actually three distinct military construction projects: the training center in Pakistan; and

two surveillance centers in Afghanistan. Specifically, the contractor built seven buildings at the training center for approximately \$12.8 million and two surveillance centers in Afghanistan for approximately \$1.9 million each. By splitting projects to meet statutory limitations, SMDC contracting officials and CNTPO officials circumvented Congress's intent for the purpose and proper use of the Operation and Maintenance appropriation. Even without splitting the military construction projects, seven of the nine buildings exceeded the \$1.5 million Operation and Maintenance statutory limitation for unspecified minor military construction projects. The Under Secretary of Defense (Comptroller)/Chief Financial Officer should request that the Under Secretary of Defense for Policy conduct an initial review of this purchase to determine whether SMDC and CNTPO officials committed an Antideficiency Act violation.

### **Task Order W9113M-07-D-0007-0006**

On March 28, 2008, SMDC contracting officials issued another task order for approximately \$3.1 million to expand existing facilities at Kabul Afghanistan International Airport (Kabul airport). CNTPO officials funded the task order with Navy FY 2008 Operation and Maintenance appropriation to accommodate support aircraft for the Drug Enforcement Administration. According to the task order, the contractor was required to construct four buildings at Kabul airport: an aviation hangar, an office building, a storage building, and living quarters. Although the task order was to construct four different buildings at a single location, the contracting officer did not individually price the construction of each building. The contracting officer established one military construction project for approximately \$3.1 million to create four different buildings under the task order.

Consequently, SMDC contracting officials and CNTPO officials may have violated the Antideficiency Act by exceeding the \$1.5 million statutory limitation. Officials followed the ASD(SO/LIC) memorandum for unspecified minor military construction projects; however, the memorandum had no authority and did not comply with 10 U.S.C. 2805. Contracting officials and CNTPO officials must fund any military construction project costing more than \$1.5 million with the Military Construction appropriation. The Under Secretary of Defense (Comptroller)/Chief Financial Officer should request that the Under Secretary of Defense for Policy conduct an initial review of this purchase to determine whether CNTPO officials violated the Antideficiency Act. In addition, the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats must stop performance on any current or future task order for military construction projects costing more than \$1.5 million financed with an Operations and Maintenance appropriation.

### ***Commercial Items for RDT&E Efforts***

DOD FMR, volume 2a, "Budget Formulations and Presentation," chapter 1, "General Information," August 2007 states that the RDT&E appropriation will fund RDT&E efforts performed by contractors at Government installations, including the procurement of end items. DOD FMR, volume 2a, chapter 1, also states that RDT&E includes the development and operational test and evaluation efforts for those end items. DOD FMR, volume 2a, chapter 1, explains that equipment and materials approved for production and intended for operational use or inventory upon delivery will be funded with the



Procurement appropriation. In addition, the DOD FMR, volume 2a, chapter 1, states that commercial off-the-shelf equipment may be procured with the RDT&E appropriation if those items require engineering design, integration, test, or evaluation efforts. FAR Subpart 2.1 defines commercial items as goods used by the public or a nongovernmental entity that have been offered for sale or lease or been licensed, or that have been sold, leased, or licensed to the public or a nongovernmental entity. Accordingly, purchases of equipment or material approved for production that do not require further engineering design, integration, test, or evaluation efforts should be made with the Procurement appropriation.

We identified two task orders that procured commercial items with the RDT&E appropriation: task orders W9113M-07-D-0006-0004 and W9113M-07-D-0008-0003. CNTPO officials required the commercial items to improve the surveillance of drug trafficking around the world. However, SMDC contracting officials and CNTPO officials misinterpreted DOD FMR volume 2a, chapter 1. Specifically, SMDC contracting officials and CNTPO officials used the RDT&E appropriation to procure commercial items that did not require either a significant modification or independent testing before operational use. Additionally, SMDC and CNTPO officials had not documented that the equipment was for RDT&E efforts.

#### **Task Order W9113M-07-D-0006-0004**

On May 1, 2008, SMDC contracting officials issued a task order for approximately \$64,000 to procure “9601-DGS-LP units” which we refer to here as tracking devices. The task order states that the objective was to procure enough tracking devices with various configurations to meet the mission of CNTPO. Specifically, the task order required that the contractor provide 50 tracking devices. CNTPO officials funded this task order with the FY 2007 Navy RDT&E appropriation.

According to the task order, CNTPO officials funded the development of these tracking devices in a previous RDT&E effort in FY 2007, and this task order was for the procurement of 50 tracking devices for the base requirement. The task order also stated that the development of the tracking devices took existing commercial off-the-shelf technology and tweaked the tracking devices to meet the CNTPO mission. CNTPO officials stated that they subsequently modified the tracking devices for integration into a “classified counterdrug system.” However, SMDC officials could not show that the tracking devices or modifications supported RDT&E efforts.

CNTPO officials should have used Procurement or the Operation and Maintenance appropriation for this task order. By using approximately \$64,000 of the FY 2007 Navy RDT&E appropriation, CNTPO officials potentially violated the Purpose Statute. A violation of the Purpose Statute may cause a violation of the Antideficiency Act. The Under Secretary of Defense (Comptroller)/Chief Financial Officer should request that the Under Secretary of Defense for Policy conduct an initial review of this purchase to determine whether CNTPO officials committed an Antideficiency Act violation.

## **Task Order W9113M-07-D-0008-0003**

On April 2, 2008, SMDC contracting officials issued a task order for approximately \$313,000 to procure low-cost, simple, and reliable ground sensor systems. The task order states that the ground sensors would detect or classify any or all potential narcotics trafficking in support of the CNTPO mission. Specifically, the contractor was required to provide 20 ground sensors, 5 as the base requirement and the remaining 15 sensors as part of an option. CNTPO officials funded the task order with the FY 2007 Navy RDT&E appropriation.

The contract file indicated that the 20 ground sensors were commercial items available under a General Services Administration, Federal Supply Schedule contract. According to the General Services Administration Web site, the General Services Administration contract provides commercial items. The contract file did not indicate that the ground sensors required any engineering, design, integration, test, or evaluation efforts.

CNTPO officials stated that the intent of the ground sensors task order was to solicit commercial solutions and procure a limited set of prototype units for in-house testing and evaluation in realistic settings. CNTPO officials explained that the testing and evaluation of the ground sensors were not part of the task order requirements, but part of a “larger project.” However, SMDC and CNTPO officials could not provide us with the details of the larger project or documentation of the testing conducted. By using approximately \$313,000 of the FY 2007 Navy RDT&E appropriation, SMDC and CNTPO officials potentially violated the Purpose Statute. As required by DOD FMR volume 14, chapter 3, “Preliminary Reviews of Potential Violations,” the Under Secretary of Defense (Comptroller)/ Chief Financial Officer should direct that the Under Secretary of Defense for Policy conduct an initial review of this purchase to determine whether CNTPO officials committed an Antideficiency Act violation.

## **Summary**

Two potential Antideficiency Act violations valued at approximately \$20.2 million occurred because SMDC and CNTPO officials followed an outdated and uncodified ASD(SO/LIC) memorandum. Two additional potential ADA violations valued at approximately \$377,000 occurred because SMDC and CNTPO officials misinterpreted DOD financial regulations. By improperly using appropriations and not adhering to statutory limitations established by Congress, SMDC and CNTPO officials may have circumvented Congress’s control of the public purse.

## **Management Comments on the Finding and Our Response**

The Principal Director for Counternarcotics and Global Threats, commenting for the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats, provided comments on Finding D of the draft report. A summary of management comments on the finding and our response are in Appendix B.

## **Recommendations, Management Comments, and Our Response**

**D.1. We recommend the Under Secretary of Defense (Comptroller)/Chief Financial Officer request that the Under Secretary of Defense for Policy:**

**a. Initiate a preliminary review of the four potential Antideficiency Act violations within 10 days of the date of this report to determine whether a violation occurred as required by DOD Regulation 7000.14-R, “Financial Management Regulation,” volume 14, chapter 3.**

**b. Complete the preliminary review within 90 days as required by DOD Regulation 7000.14-R, “DOD Financial Management Regulation,” volume 14, chapter 3, and provide the results of the preliminary investigation to the Office of Inspector General.**

### ***Under Secretary of Defense (Comptroller)/Chief Financial Officer Comments***

The Deputy Chief Financial Officer, commenting for the Under Secretary of Defense (Comptroller)/Chief Financial Officer, agreed. He stated that the Under Secretary formally requested the Under Secretary of Defense for Policy to conduct a preliminary investigation to determine whether formal investigations should occur of the potential Antideficiency Act violations.

### ***Our Response***

The Under Secretary of Defense (Comptroller)/Chief Financial Officer took appropriate actions, and no further comments are required.

### ***Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats Comments***

Although not required to respond, the Principal Director for Counternarcotics and Global Threats, commenting for the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats, disagreed. He stated that, for the reasons stated in his comments on Finding D, there were no Antideficiency Act violations.

### ***Our Response***

We will defer to the Under Secretary of Defense (Comptroller)/Chief Financial Officer, to determine whether an Antideficiency Act violation has occurred.

**D.2. We recommend that the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats:**

**a. Stop performance on any current task orders and award activities on any new task orders for military construction projects costing more than \$1.5 million financed with the Operation and Maintenance appropriation.**

**b. Budget for and request sufficient funding from the Military Construction appropriation for all military construction projects costing more than \$1.5 million as required by section 2805, title 10, United States Code.**

**c. Cancel the policy memorandum on the use of the Operation and Maintenance appropriation for unspecified minor military construction projects as required by DOD Instruction 5025.01, "DOD Directives Program," October 28, 2007.**

**d. Issue a new policy memorandum for use of the Operation and Maintenance appropriation on unspecified minor military construction projects in accordance with DOD Instruction 5025.01, "DOD Directives Program," October 28, 2007, and ensure that the memorandum complies with section 2805, title 10, United States Code.**

***Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats Comments***

The Principal Director for Counternarcotics and Global Threats, commenting for the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats, disagreed. He stated that, for the reasons stated in his comments on Finding D, there were no Antideficiency Act violations. The Principal Director stated that the audit report focused on the military construction limits in 10 U.S.C 2805, rather than section 1004 of the National Defense Authorization Act of 1991, as amended. The Principal Director stated that section 1004 provide the statutory authority to use counternarcotics Operation and Maintenance funds for unspecified minor military construction projects costing up to \$2 million. The Principal Director also stated that his office is consulting with the proponent of DOD Instruction 5025.01.

***Our Response***

The Principal Director for Counternarcotics and Global Threats comments were not supported by the documents in the contracting files for the respective task orders. CNTPO was not exempt from minor military construction limitations found in 10 U.S.C 2805 for counterdrug activities. Therefore, the minor military construction limitations in 10 U.S.C. 2805 apply to CNTPO. The Principal Director should stop performance on any current task orders and award activities on any new task orders for military construction projects costing more than \$1.5 million financed with the Operation and Maintenance appropriation. The Principal Director should also budget for and request sufficient funding from the Military Construction appropriation for all military

construction projects costing more than \$1.5 million as required by section 2805, title 10, United States Code.

Additionally, the Principal Director did not state whether he planned to cancel the ASD(SO/LIC) memorandum on unspecified minor military construction projects and issue a new policy memorandum. We request that the Principal Director provide comments in response to the final report addressing the recommendations.

## Appendix A. Scope and Methodology

We conducted this performance audit from August 2008 through June 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We interviewed DOD officials responsible for contract administration, management, surveillance, and billing. We also contacted officials from the Defense Contract Management Agency, Defense Finance and Accounting Service, and Defense Contract Audit Agency by phone and e-mail. To review the original contracting documentation, we visited CNTPO in Dahlgren, Virginia, and the SMDC Contracting and Acquisition Management Office in Huntsville, Alabama.

We reviewed task orders issued under the CNTPO IDIQ contracts awarded to five prime contractors. Specifically, we reviewed 35 task orders, totaling approximately \$98.8 million, awarded from August 24, 2007, to August 16, 2008. At SMDC contracting officials' request, we reviewed only the task orders issued as of August 16, 2008. SMDC contracting officials made the request because they were working to award at least 40 more task orders by September 30, 2008, and could not fully support the documentation request from the auditors. We reviewed the contracting office contract files for the 35 task orders. We then determined whether the contracting officers and their representative(s) properly managed task orders, contract management, contract surveillance, and contractor billing. We did not review management of the award process—the requirements definition, competition, or award decisions—nor was it part of our planned objectives. We considered the potential task order value to be the amount of the task order plus any options that the contracting officer could exercise. See Table A-1 for a summary of the task orders reviewed.

**Table A-1. CNTPO IDIQ Task Orders Reviewed**

<b>Contract Number</b>	<b>Contractor</b>	<b>Task Orders</b>	<b>Award Amount (in millions)</b>	<b>Potential Amount (in millions)</b>
W9113M-07-D-0005	Blackwater	8	\$39.9	\$40.4
W9113M-07-D-0006	Lockheed Martin	8	12.2	62.7
W9113M-07-D-0007	TASC	11	45.3	45.5
W9113M-07-D-0008	Raytheon	7	1.4	1.4
W9113M-07-D-0009	ARINC	1	0.025	0.025
<b>Total</b>		<b>35</b>	<b>\$98.8</b>	<b>\$150.1*</b>

\* Amounts do not equal the total because of rounding.

SMDC contracting officers issued 45 task orders, with a potential value of approximately \$1.1 billion, between August 21, 2008, and March 12, 2009. While we did not review the contract management, surveillance, or billing of the task orders in Table A-2, we reviewed their total other direct costs. The recommendations made in this report should be applied to the 45 task orders and any future task orders. Please see Table A-2 for a summary of the task orders awarded after the commencement of our audit.

**Table A-2. CNTPO IDIQ Task Orders Not Reviewed**

<b>Contract Number</b>	<b>Contractor</b>	<b>Task Orders</b>	<b>Award Amount (in millions)</b>	<b>Potential Amount (in millions)</b>
W9113M-07-D-0005	Blackwater	10	\$146.1	\$425.5
W9113M-07-D-0006	Lockheed Martin	15	35.1	80.7
W9113M-07-D-0007	TASC	12	122.0	290.7
W9113M-07-D-0008	Raytheon	7	29.8	104.2
W9113M-07-D-0009	ARINC	1	167.2	167.2
<b>Total</b>		<b>45</b>	<b>\$500.3*</b>	<b>\$1,068.3</b>

\* Amounts do not equal the total because of rounding.

For contract management, we reviewed the task order files to determine whether officials properly maintained each contract file; delegated administrative roles; identified Government-furnished equipment, materials, property, and information; funded the task order; and used firm-fixed-price and cost-type contracts. We reviewed task orders, modifications, contract award summaries, funding documents, contractor proposals, and independent Government cost estimates for compliance with the following: the FAR; DFARS; policy memoranda issued by the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; and the DOD FMR.

For contract surveillance, we reviewed each task order to determine whether contracting officials properly accepted services or goods purchased, delegated CORs, created QASPs, and managed Government-furnished property. We reviewed the task orders, modifications, COR and task order monitor delegation letters, and contractor monthly expense and progress reports for compliance with the FAR; the DFARS; policy memoranda issued by the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; and the DOD FMR.

For contractor billing, we reviewed billing information to determine whether the contractors complied with requirements in the CNTPO IDIQ contracts, properly submitted public vouchers, and were entitled to payment. Specifically, we reviewed the task orders, modifications, monthly contractor expense and progress reports, disbursing reports, public vouchers, and public voucher support documentation. We reviewed the documents for compliance with the FAR and the DOD FMR.

For training, we reviewed the training records for contracting officers and CORs to determine whether they complied with Federal and DOD requirements. We reviewed the individual training certificates, acquisition career record briefs, and SMDC training records. We checked the documentation for compliance with DFARS; policy memoranda issued by the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics; Department of the Army memoranda; Army Acquisition Corps memoranda; and the memorandum issued by the Office of Management and Budget's Office of Federal Procurement Policy.

## **Use of Computer-Processed Data**

For the 35 task orders we reviewed, we relied on the data contained in the contracting files to support the findings and conclusions in this report. We used computer-processed data from the Electronic Document Access system to obtain general information about the 45 task orders awarded after August 16, 2008. The 45 task orders were not used as a basis for our findings and conclusions. Therefore, we did not perform a formal reliability assessment of the computer-processed data.

## **Prior Coverage**

No audit reports on the management of the CNTPO IDIQ contracts were issued during the last 5 years.



## **Appendix B. Management Comments on Finding D and Our Response**

The Principal Director for Counternarcotics and Global Threats, commenting for the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats, provided the following comments on Finding D of the draft report.

### **Comments on Construction Projects**

The Principal Director for Counternarcotics and Global Threats, commenting for the Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats, stated that we did not did not fully consider section 1004 of the National Defense Authorization Act of 1991. He stated that section 1004 provides independent authority to use counternarcotics Operation and Maintenance funds, appropriated for drug interdiction and counter drug activities, for unspecified minor military construction projects. The Principal Director also stated that the DOD General Counsel's office concluded that to apply the standard ceiling on unspecified minor construction projects to section 1004(b)(4) would essentially destroy the ability to create and operate effective counterdrug facilities. The Principal Director stated that the Department considers section 1004(b)(4) an exception to the limits imposed by 10 U.S.C. 2805(c)(1), but uses the unspecified minor military construction definition contained in 10 U.S.C. 2805(a)(1) to establish the ceiling for the use of counternarcotics Operation and Maintenance appropriations.

The Principal Director stated that when the ASD(SO/LIC) memorandum was drafted, the ceiling for unspecified minor military construction was \$1.5 million. He stated that on January 28, 2008, Congress raised the ceiling to \$2 million. The Principal Director stated that, regardless of the enforcement of the ASD(SO/LIC) memorandum, a statutory authority existed for the use of counternarcotics Operation and Maintenance funds for unspecified minor military construction projects costing up to \$2 million.

### ***Frontier Corps Project (Task Order W9113M-07-D-0005-0002)***

The Principal Director stated that Army Regulation 420-1, "Army Facilities Management," February 19, 2008, states that facilities with a common support purpose that are not mutually dependent can be funded as separate projects. The Principal Director further stated that Army Pamphlet 420-11, "Project Definition and Work Classification," October 7, 1994, states that installing equipment that is movable and not affixed as an integral part of existing real property is not construction and will not be funded as a construction cost.

For task order W9113M-07-D-0005-0002, the Principal Director stated that the task order's base requirements and options were specifically configured as stand-alone construction projects and not dependent on each other for any purpose. He concluded that the minor military construction projects were independent facilities, therefore eligible

under the statutory authority in section 1004 for counternarcotics Operation and Maintenance funds for unspecified minor military construction projects costing up to \$2 million. The Principal Director stated that we combined the costs of furnishing and nonconstruction services with the construction costs. The Principal Director stated that he disagrees that there was an Antideficiency Act violation.

### ***Kabul Airport Project (Task Order W9113M-07-D-0007-0006)***

For task order W9113M-07-D-0007-0006, the Principal Director stated that the construction projects in the task order were specifically configured as stand-alone construction projects because they were independent. He explained that the Afghanistan Government required the Department to move a temporary hangar from one area to a different area near the Kabul airport, at a cost of \$1.4 million. The Department then constructed a separate office building costing \$644,000 and a storage building costing \$716,000. The Principal Director stated that neither building was dependent on the other. He also stated that living quarters costing \$1 million were also constructed. The Principal Director disagreed that the task order violated the Antideficiency Act.

### **Comments on RDT&E Efforts**

The Principal Director disagreed that the two contracts using RDT&E appropriations should have used the Operation and Maintenance appropriation. He stated that for task order W9113M-07-D-0006-0004, the tracking devices (9601-DGS-LP units) were not items that were customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes. The Principal Director also stated that the ground sensors for task order W9113M-07-D-0008-0003 were purchased to develop the Counternarcotics Unattended Ground Sensor System. He stated that a detailed test and evaluation plan was written into the standard operating procedures for the system. The Principal Director stated that the engineering and test effort met the purpose of the RDT&E appropriation.

### **Our Response**

The support was not included in the contracting files for the respective task orders. Therefore, we will defer to the Under Secretary of Defense (Comptroller)/Chief Financial Officer to determine whether a potential Antideficiency Act violation has occurred.

# Under Secretary of Defense (Comptroller)/Chief Financial Officer Comments



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100


JUN 18 2009

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL, ACQUISITION AND  
CONTRACT MANAGEMENT, DEPARTMENT OF  
DEFENSE INSPECTOR GENERAL

SUBJECT: Response to Draft Audit Report, Contracts Supporting the DoD Counter  
Narcoterrorism Technology Program Office (Project No. D2008-D000AS-  
0255.000)

This memorandum forwards the Office of the Under Secretary of Defense  
(Comptroller) response to the draft audit report (attached).

The Department appreciates the opportunity to comment on the subject report.  
My staff point of contact on this matter is [REDACTED] She may be contacted by email at  
[REDACTED] or by phone at [REDACTED]

  
Mark E. Easton  
Deputy Chief Financial Officer

Attachment:  
As stated

**DOD OIG DRAFT REPORT DATED JUNE 12, 2009  
PROJECT NO. D2008-D000AS-0255.000**

**CONTRACTS SUPPORTING THE DOD COUNTER NARCOTERRORISM  
TECHNOLOGY PROGRAM OFFICE**

**OFFICE OF THE UNDER SECRETARY OF DEFENSE (COMPTROLLER)  
COMMENTS TO THE DOD OIG RECOMMENDATIONS.**

**RECOMMENDATION D.1:** We recommend that the Under Secretary of Defense (Comptroller)/DoD Chief Financial Officer direct the Under Secretary of Defense for Policy to:

- a. Initiate a preliminary review of the four potential Antideficiency Act violations within 10 days of the date of this report to determine whether a violation occurred as required by DoD Regulation 7000.14-R, "Financial Management Regulation," volume 14, chapter 3.
- b. Complete the preliminary review within 90 days as required by DoD Regulation 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, and provide the results of the preliminary investigation to the Office of Inspector General.

**OUSDC(C) RESPONSE:** Concur. The Deputy Chief Financial Officer concurs and requested the Under Secretary for Defense for Policy conduct a preliminary investigation to determine whether formal investigations should occur for the four potential Antideficiency Act violations.



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

JUN 18 2009

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (POLICY)

SUBJECT: Potential Antideficiency Act (ADA) Violations

Potential violations of the ADA were discovered during a Department of Defense Inspector General audit, Contracts Supporting the DoD Counter Narcoterrorism Technology Program Office (CNTPO) (Project No. D2008-D000AS-0255.000). The report states CNTPO officials committed four potential Purpose Statute violations which could result in potential ADA violations amounting to approximately \$20.5 million.

As the administrator of the funds, I request you initiate a preliminary review of the potential ADAs in accordance with the Department of Defense Financial Management Regulation ("DoDFMR") Volume 14, Chapter 3, and provide my office with a copy of the review (including legal coordination) within 90 days of the date of this memorandum. My office will review your findings and advise you if we concur with the findings.

My point of contact for this action is [REDACTED] She can be reached by phone at [REDACTED] or by email at [REDACTED]

Mark E. Easton  
Deputy Chief Financial Officer

# Defense Contract Audit Agency Comments



DEFENSE CONTRACT AUDIT AGENCY  
DEPARTMENT OF DEFENSE  
8725 JOHN J. KINGMAN ROAD, SUITE 2135  
FORT BELVOIR, VA 22060-6219

IN REPLY REFER TO

PPD 225.4 [D2008-D000AS-0255.000]

July 15, 2009

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR ACQUISITION AND  
CONTRACT MANAGEMENT, OFFICE OF THE INSPECTOR  
GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Response to Department of Defense Office of Inspector General (DoDIG) Draft  
Report, *Contracts Supporting the DoD Counter Narcoterrorism Technology  
Program Office*, dated June 12, 2009 (Project No. D2008-D000AS-0255.000)

Thank you for the opportunity to respond to the subject draft report, *Contracts Supporting the DoD Counter Narcoterrorism Technology Program Office*. The following are DCAA's comments and responses to each of the recommendations impacting DCAA.

The DoDIG found that the contracting officers improperly awarded the IDIQ effort under the subject contracts as firm-fixed-price in lieu of cost-type or time-and-material contracts. Based on the improper contract terms, some contractors are not submitting the billings for the labor hours and costs through DCAA, in accordance with DFARS 242.803(b)(i)(B). We are aware of at least one instance where the labor-hour contract line items (CLINs) are being billed and paid through the use of DD Form 250 Material Inspection and Receiving reports (that are not processed by DCAA). The DoDIG recommendations relating to DCAA's review of public vouchers and incurred costs will require the contractor to submit billings for labor and material/ODC costs under public vouchers to DCAA. We recommend that the report include a recommendation requiring the contracting officers to take the necessary steps to have the contractor submit billings for labor and material/ODC on public vouchers (SF 1034) to DCAA for review and provisional approval. Considering the above, detailed below are our responses to the DoDIG recommendations:

**DoDIG Recommendation C.1:** We recommend that the Director, Defense Contract Audit Agency:

- a. Include public vouchers submitted under the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts as part of its review of public vouchers, in accordance with the procedures identified in the Defense Contract Audit Agency Manual 7640.1, "Defense Contract Audit Manual."



PPD 225.4 [D2008-D000AS-0255.000]

July 15, 2009


SUBJECT: Response to Department of Defense Office of Inspector General (DoDIG) Draft Report, *Contracts Supporting the DoD Counter Narcoterrorism Technology Program Office*, dated June 12, 2009 (Project No. D2008-D000AS-0255.000)

- b. Conduct a cost audit of the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts to include the other direct costs and any time-and-materials of labor-hour contract line items.

**DCAA Response to DoDIG Recommendation C.1:**

- a. Concur. DCAA will include public vouchers submitted under the Narcoterrorism program contracts as part of its next review of public vouchers performed in accordance with DCAA guidance contained in the Defense Contract Audit Manual, Chapter 6. However, it should be noted that not all of the labor costs are currently being billed under public vouchers. As stated above, we recommend that the contracting officer take the necessary actions to require the billings for labor and material/ODC to be submitted under public vouchers (SF 1034) and processed by DCAA.
- b. Concur. DCAA will perform incurred costs audits of the Narcoterrorism contracts, in accordance with the requirements in the DCAA Contract Audit Manual. However, as stated above, the contractor is treating some of these contract line items as FFP. We recommend that the contracting officer take all necessary actions to ensure the contractors appropriately include these contracts within their final indirect cost rate proposals as subject to FAR 52.216-7, Allowable Cost and Payment.

Questions regarding this memorandum should be directed to [REDACTED] Program Manager, Policy Programs Division, at [REDACTED].

  
Kenneth J. Saeecchia  
Assistant Director  
Policy and Plans

# Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats Comments



SPECIAL OPERATIONS/  
LOW-INTENSITY CONFLICT  
& INTERDEPENDENT CAPABILITIES

## OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

2500 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2500

JUL 27 2009

### MEMORANDUM FOR INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Contracts Supporting the DoD Counter Narcoterrorism Technology Program  
Office (Project D2008-D000AS-0255.000)

The Office of the Deputy Assistant Secretary of Defense for Counter Narcotics and Global Threats has reviewed the subject draft report and has enclosed specific comments addressing the recommendations provided in the report.

The Department disagrees with the finding that there are apparent Antideficiency Act violations, or that there is a need to conduct a preliminary review. In view of the many overlapping statutory authorities, and regulations, my recommendation is that we meet with the Inspector General office to have a detailed discussion of the report and how the Authorities, as provided by Congress, allow us to execute minor military construction projects, prior to the release of the Inspector General's final report.

The ODASD CN&GT point of contact is [REDACTED] He can be reached at [REDACTED]

A handwritten signature in black ink, reading "Edward Frothingham III".

Edward Frothingham  
Principal Director  
Counternarcotics & Global Threats



**Office of Deputy Assistant Secretary of Defense for Counternarcotics & Global Threats**  
**Response to**  
**Inspector General's Draft Report on Contracts Supporting the DoD**  
**Counter Narco-Terrorism Technology Program Office (Project D2008-D000AS-0255.000)**

Thank you for the opportunity to review and comment on your June 12, 2009 draft IG report as referenced above. I wish to also thank you for extending the review period until July 27. Before addressing the findings and recommendations in the draft IG report it is helpful to put the activities that your team assessed into context.

A variety of dynamics within and outside Afghanistan continue to create conditions conducive to the establishment of terrorist safe havens and complicate efforts to create an environment that will prevent their return. A lack of human security, a crisis of Government of the Islamic Republic of Afghanistan (GIROA) legitimacy, a rising insurgency, widespread narco-trafficking and criminality, and little hope in the future of Afghanistan among disenfranchised Afghan populations hinder rapid progress and implementation of our programs.

Since 2005, the insurgency in Afghanistan has strengthened and adapted. In many areas, the Afghan population neither trusts nor respects the Afghan government because several factors: abuse of power, rampant corruption, and predatory behavior with few opportunities for redress, the government's inability or perceived unwillingness to ensure security and justice, a lack of bureaucratic and human capacity to provide responsive services, and a perception of neglect by Kabul. Nearly 25 years of war and violence have devastated Afghanistan's polity, economy, and society. Unmet expectations and a lack of security are major constraints for communities who are choosing whether to engage with GIROA or submit to insurgent intimidation or give in to the draw of income from poppy production. To capitalize on and underscore these feelings of insecurity, the insurgency provides brutal but swift justice and targets symbols of the government, such as government authorities, Afghan security forces, schools and district centers. The slow progress in developing and professionalizing the Afghan National Police (ANP) and insufficient numbers of Afghan National Army (ANA) have made it difficult for GIROA to provide the population with sufficient protection.

GIROA's inability to provide basic security, rule of law, and border control has created an opportunity for transnational crime, particularly in the narcotics industry. Criminal networks, organized around narcotics (in the south) and other forms of smuggling (particularly natural resources in the east), flourish with impunity. The narcotics industry, the most profitable of the criminal networks, undercuts licit agriculture and development, undermines governance, and is one of the most important sources of funding for the insurgency. In many parts of the south, people are dependent on poppy revenue and loans, threatened by narco-security forces, and beholden to the criminal networks and powerbrokers that underpin the industry. Processing and transit points for narcotics are spread throughout the country and frequently link to political insurgent networks, providing funding for their actions against GIROA and Coalition Forces.

In terms of the draft IG report, this context means that routine activities become very difficult, requiring creativity and commitment to execute the national strategy. All SMDC and CNTPO efforts should be viewed in that light.

Our review of the draft IG report discloses that there were four major findings, and we will organize our comments by each respective finding.

**Finding A: Contract Management.** Contract Management is the responsibility of SMDC. Since this office has no direct information relating to contract management, it is not competent to comment on this finding. We look forward to reviewing the SMDC response. Until then, we continue to rely on the presumption that SMDC executed its responsibilities properly.

**Finding B: Contract Surveillance.** Contract Surveillance is the responsibility of SMDC. Since this office has no direct information relating to contract management, it is not competent to comment on this finding. However, the Department disagrees with the conclusion in Finding B that "...because of insufficient Government surveillance, that there is no assurance that the Government received all goods and services purchased, worth approximately \$98.8 million." As a matter of fact, this office independently initiated procedures to account for all CN funded equipment. On June 26, 2008, DASD CN & GT directed that an End-Use -Monitoring of DoD Counter narcotics equipment issued to foreign nations through the end of FY07 be conducted. In addition to vehicles, aircraft, communications equipment, etc., it included a 100% inventory of all Night Vision Devices and weapons with confirmation that this equipment is being stored and controlled properly. The results of that audit can be found in TAB A. Additionally, military construction (or the lack thereof) was constantly monitored in the field and this office as the Department implemented its counternarcotics programs. Based on these points, the conclusion is inaccurate. With regard to the remainder of Finding B, we look forward to reviewing the SMDC response. Until then, we continue to rely on the presumption that SMDC executed its responsibilities properly.

**Finding C: Contractor Billing.** Contractor billing is the responsibility of SMDC. Since this office has no direct information relating to contract management, it is not competent to comment on this finding. We look forward to reviewing the SMDC response. Until then, we continue to rely on the presumption that SMDC executed its responsibilities properly.

**Finding D: Potential Antideficiency Act.** Finding D is the only finding in the report that addresses matters for which this office has direct responsibility. Finding D identified four potential violations of 31 U.S.C. 1301 (Purpose Statute) which if true would lead to violation of 31 U.S.C. 1341 (Antideficiency Act). The potential violations were identified in the report by Task Order and we will address our response by Task Order.

The first two Task Orders addressed in the IG report are Task Order W9113M-07-D-0005-0002 and Task Order W9113M-07-D-0007-0006. Both of these Task Orders are related to minor military construction, the former (0002) in Pakistan, and the latter (0006) in Afghanistan. According to the draft IG report, the basis for the Antideficiency Act findings for 0002 and 0006 was that operation and maintenance (O&M) appropriations were used for military construction projects exceeding \$1.5 million, the limit established in 10 U.S.C. 2805 in order to "...correct a deficiency that threatens life, health, or safety." In the discussion of 0002 and 0006, the IG report drafters first considered and then rejected the ASD/SOLIC, November 21, 2005, memorandum "Unspecified Minor Military Construction Project Pursuant to Section 1004." The IG report characterized the November 21, 2005 ASD/SOLIC memorandum as a "directive

TAB A omitted  
because of length.  
Copies will be  
provided upon  
request.

type memorandum” within the coverage of DoD Instruction 5025.01 dated October 28, 2007, which would have required the November 21, 2005 memorandum to have been cancelled on April 25, 2008.

While interesting, the discussion of the November 21, 2005 memorandum is irrelevant. In fact the IG report’s focus on the military construction limits 10 U.S.C. 2805 and the November 21, 2005 ASD/SOLIC memorandum indicate that the IG audit team did not fully consider Section 1004 of the National Defense Authorization Act of 1991, as amended (section 1004). The draft IG report implies that the funding thresholds that are contained in 10 U.S.C. 2805, (c) (1) (A) or (B) apply. We disagree.

It is section 1004 that provides independent authority to use counternarcotics (CN) O&M funds, appropriated for Drug interdiction and Counter drug activities, for unspecified minor military construction projects. Specifically section 1004 (b)(4) authorizes the appropriation of funds for “the establishment (including unspecified minor construction) and operation of bases of training facilities for the purpose of facilitating counter-drug activities within or outside the United States.”

The DoD General Counsel’s office previously concluded that to impose the standard (then \$500,000/ now \$750,000) ceiling on unspecified minor construction projects to the legislative effort in section 1004 (b)(4) to allocate dozens of millions of dollars for construction of counter-drug facilities throughout the world, it essentially would destroy the ability to create and operate effective counter-drug facilities (TAB B). Whenever possible, DoD should construe apparently conflicting statutes so as to harmonize the provisions of law in a way that gives them greatest possible effect. This practice of interpreting two statutes together so as to give effect to both laws, is a time honored, widely recognized principle of statutory construction.

Aside from the general principles of statutory construction, Congress provided specific, albeit confusing, guidance for DoD to interpret section 1004 broadly when disbursing funds to establish counter-drug facilities. In the Conference Report to the FY 1991 National Defense Authorization Act, the Committee noted that:

Section 1212 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189) authorized the military assistance to law enforcement agencies with counter-drug responsibilities and provided \$40 million for such assistance. The Defense Department encountered a number of perceived legal obstacles in carrying out the provisions of that section and did not obligate most of the funds earmarked for this support. The conferees are disappointed that assistance to law enforcement was not provided to the degree it should have been during Fiscal Year 1990.<sup>1</sup>

The Senate Report for this Act provides a slightly different set of instructions:

It is emphasized that the committee does not intend to limit the authority to approve or request such support [for counter-drug activities pursuant to section 1004] to those individuals and encourages the delegation of both authorities to the

TAB B omitted  
because of length.  
Copies will be  
provided upon  
request.



lowest level possible so that excessive bureaucratic delays are avoided ... The committee has made a number of other changes designed to broaden the authority of the Department of Defense to provide support. Chief among these broadening changes are ... the clarification that the Department of Defense may undertake unspecified minor construction activities pursuant to section 2805 of title 10, United States Code (emphasis supplied).<sup>2</sup>

Congress, through both the Senate and Conference reports, intended to deliver a clear message for the Department of Defense to overcome perceived legal obstacles in obligating and disbursing section 1004 funds; however, it did not state whether or not the Department should recognize or overlook the existing \$300,000 statutory ceiling on unspecified minor construction contained in 10 U.S.C. 2805(c)(1).<sup>3</sup> Because the language contained in both Authorization reports and the language contained in the Appropriations Act encourage significantly greater allocation of DoD funds for establishment of counter-drug facilities, it is unlikely that Congress intended to limit disbursement of the \$50 million appropriation to \$300,000 increments.<sup>4</sup> Although a narrow reading of the relevant statutes might apply the \$300,000 limit to section 1004 expenditures, a broader interpretation of the law is needed to effectuate Congress' clearly expressed desire to disburse the funds appropriated for counter-drug facilities and programs. The only way to give significant legal effect to both section 1004 (b)(4) and 10 U.S.C. 2805(c)(1) is to view the former as an exception to the latter.

This interpretation was bolstered when Congress amended section 1004 NDAA for FY 1999 by expanding the authority in section 1004 (b)(4) by including the Department of Defense to the class for which unspecified minor construction was authorized.<sup>5</sup> As a part of that amendment, Congress also added a provision that requires congressional notification "...when a decision is made to carry out a military construction project described in paragraph (2)." Paragraph (2) states that:

(2) Paragraph (1) applies to an unspecified minor military construction project that –

- (A) is intended for the modification or repair [not of a new facility] of a Department of Defense facility for the purpose set forth in subsection (b)(4); and
- (B) has an estimated cost of more than \$500,000.

Congress clearly contemplated unspecified minor military construction costs in excess of (then \$500,000/ now \$750,000) under the authority subsection (b)(4), although they required congressional notification only in the case of modification or repair of a Department of Defense facility.

Consequently, the Department considers section 1004 (b)(4) as an exception to the limits imposed by 10 U.S.C. 2805(c)(1), but it uses the unspecified minor military construction definition contained in 10 U.S.C. 2805(a)(1) to establish the ceiling for the use of CN O&M appropriations. When the ASD/SOLIC, November 21, 2005, memorandum was drafted the ceiling was \$1.5M. Congress amended 10 U.S.C. 2805 and raised the ceiling in 10 U.S.C. 2805(a)(1) to \$2M effective January 28, 2008. As a result, whether or not the ASD/SOLIC,

November 21, 2005, memorandum is in force, there exists statutory authority to use CN O&M for unspecified minor military construction project costing up to \$2M.

In its analysis of Task Order 0002 (Frontier Corps), the draft IG report states:

SMDC contracting officials and CNTPO officials established nine military construction projects under one task order, with each building as a separate contract option. CNTPO officials funded the military construction projects, worth approximately \$17.1 million, with the FY 2007 Department of the Army, Navy and Air Force Operation and Maintenance appropriation. Although officials established nine military construction projects, there were actually three distinct military construction projects: the training center in Pakistan; and two surveillance centers in Afghanistan. Specifically, the contractor built seven buildings at the training center for approximately \$12.8 million and two surveillance centers in Afghanistan for approximately \$1.9 million each. By splitting projects to meet statutory limitations, SMDC contracting officials and CNTPO officials circumvented Congress's intent for the purpose and proper use of the Operation and Maintenance appropriation. Even without splitting the military construction projects, seven of the nine buildings exceeded the Operation and Maintenance statutory limitation for unspecified minor military construction projects.

Task Order 0002 (Frontier Corps) was issued in accordance with section 1004. Due to security concerns in the combat zone, it was likely that some of the construction would not proceed. To preserve flexibility, CNTPO, CENTCOM, and SMDC developed options to allow the projects to proceed separately and non-sequentially (TAB C). There were a total of nine buildings (basic and eight options) in this Task Order. As a result, the task order base requirement and options were specifically configured as stand-alone construction projects and not dependent on each other for any purpose. In fact, as the draft IG report notes, seven projects were in Pakistan and two projects were in Afghanistan. Army Regulation 420-1 clearly states that those facilities which have a common support purpose, but are not mutually dependent, are therefore funded as separate projects (TAB D). When reviewing the Performance Work Statement it became apparent that the IG audit team combined the costs of furnishing and non- construction services with the construction costs. Army Pamphlet 420-11 (PAM 420-11) states that costs associated with installing equipment that is movable and not affixed as an integral part of existing real property is not construction and will not be funded as a construction cost. (TAB E). When the costs of furnishing and non- construction services are removed, the construction costs are:

Basic	Barracks- Pakistan forces	\$1.4M
Option A	Dinning Facility	\$1.2M
Option C	Instructor's Quarters	\$1.4M
Option D	Training Center	\$ .9M
Option E	Headquarters Facility	\$1.1M
Option H	Barracks- Afghan Forces	\$1.4M
Option J	Barracks- Coalition Forces	\$1.4M
Option G	Surveillance Center Afghan	\$1.4M

TAB C, TAB D, and TAB E omitted because of length. Copies will be provided upon request.

Option I      Surveillance Center Afghan    \$1.4M

In sum, all construction costs for Task Order 0002 (Frontier Corps) were below the previous statutory ceiling of \$1.5M, and well below the \$2M ceiling in effect on January 28, 2008. The construction projects were specifically configured as stand-alone construction projects to preserve flexibility in a combat zone, not to stay within statutory limitations (TAB F). The Department disagrees with the finding that there is an apparent Antideficiency Act violation or that there is a need to conduct a preliminary review.

In its analysis of Task Order 0006 (DEA Kabul), the draft IG report states:

On March 28, 2008, SMDC contracting officials issued another task order for approximately \$3.1M to expand existing facilities at Kabul Afghanistan International Airport (Kabul airport). CNTPO officials funded the task order with Navy FY 2008 Operation and Maintenance appropriation to accommodate support aircraft for the Drug Enforcement Administration. According to the task order, the contractor was required to construct four buildings at Kabul airport: an aviation hangar, an office building, a storage building, and living quarters. Although the task order was to construct four different buildings at a single location, the contracting officer did not individually price the construction of each building. The contracting officer established one military construction project for approximately \$3.1 million to create four different buildings under the task order.

Consequently, SMDC contracting officials and CNTPO officials may have violated the Antideficiency Act by exceeding the \$1.5 million statutory limitation. Officials followed the ASD (SO/LIC) memorandum for unspecified minor military construction projects; however, the memorandum had no authority and did not comply with 10 U.S.C. 2805. Contracting officials and CNTPO officials must fund any military construction project costing more than (sic) \$1.5 million with the Military Construction appropriation. The Under Secretary of Defense (Comptroller)/ Chief Financial Officer should direct that the Under Secretary of Defense for Policy conduct an initial review of this purchase to determine whether CNTPO officials violated the Antideficiency Act. In addition, the Deputy Assistant Secretary of Defense for Counter Narcotics, Counter Proliferation, and Global Threats must stop performance on any current or future task order for military construction projects costing more than \$1.5 million finance with Operation and Maintenance appropriation.

Task Order 0006 (DEA Kabul), was issued in accordance with section 1004. It consisted of an aviation hangar, an office building, a storage building and living quarters. The facts are as follows:

After the initial invasion of Afghanistan, coalition forces occupied the [REDACTED] of the Kabul Airport and began to operate. However, in 2005 the GIRoA notified the coalition elements at the Kabul airport that they would have to vacate the [REDACTED] [REDACTED]. All the US government elements at the airport started planning to move from the [REDACTED] [REDACTED]

TAB F omitted  
because of length.  
Copies will be  
provided upon  
request.



██████ to the ██████. The Department began construction of the Afghanistan Joint Aviation Facility (JAF) and the Department of State, Bureau of International Narcotics and Law Enforcement (INL) began construction of their aviation compound on the ██████. The Drug Enforcement Administration aviation unit asked the Department to establish their new aviation base of operation on the INL land.

Prior to 2005, the Department constructed a temporary hangar on the ██████ of the Kabul Airport to house the Afghan Ministry of Interior Counter Narcotics Aviation M1-17s helicopters. When construction of the JAF on the ██████ Kabul Airport was finished, the Department moved the temporary hangar on the ██████ of the Kabul Airport to the INL aviation compound on the ██████. The cost of moving the hangar was \$1.4M. The Department then constructed a separate office building and storage building on the INL aviation compound located on the ██████ of the Kabul Airport. The office and storage buildings are clearly not dependant on each other within the meaning of Army regulation 420-1. The cost of the office was \$644K and the cost of the storage building was \$716K.

Finally, living quarters were constructed approximately ██████ from the airport at the ██████ and has no connection to INL aviation compound at all. The living quarters were for ground personnel with no association to the aviation mission. The cost of the living quarters was \$1M.

As was the case for Task Order 0002 (Frontier Corps) before, section 1004 provides statutory authority to use CN O&M for unspecified minor military construction project costing up to \$2M. Additionally, all construction costs for Task Order 0006 (DEA Kabul) were below the previous statutory ceiling of \$1.5 M and well below the \$2 M ceiling in effect on January 28, 2008. The construction projects were specifically configured as stand-alone construction projects because they were independent. The Department disagrees with the finding that there is an apparent Antideficiency Act violation or that there is a need to conduct a preliminary review.

The final two Task Orders addressed in the IG report are Task Order W9113M-07-D-0006-0004 and Task Order W9113M-07-D-0008-0003. Both of these Task Orders are related technical equipment, the former (0004) tracking devices, and the latter (0003) sensors. The basis for the Antideficiency Act findings for 0004 and 0003 was that Research, Development, Test, and Evaluation (RDT&E) appropriations were used instead of O&M or Procurement appropriations to acquire commercial off-the-shelf technology.

In its analysis of Task Order 0004 (tracking devices), the draft IG report states:

On May 1, 2008, SMDC contracting officials issued a Task Order for approximately \$64,000 to procure “9601- DGS-LP units” which we refer to here as tracking devices. The task order states that the objective was to procure enough tracking devices with various configurations to meet the mission of CNTPO. Specifically, the task order required that the contractor provide 50 tracking devices. CNTPO funded this task order with the FY 2007 Navy RDT&E appropriation.

According to the task order, CNTPO officials funded the development of these tracking devices in a previous RDT&E effort in FY 2007, and this task order was for the procurement of 50 tracking devices for the base procurement. This task order also stated that the development of Antideficiency Act and tweaked the tracking devices to meet the CNTPO mission. CNTPO officials stated that they subsequently modified the tracking devices for integration into a “classified counterdrug system.” However, SMDC officials could not prove that the tracking devices or modifications supported RDT&E efforts.

CNTPO officials should have used the Procurement or Operation and Maintenance appropriation for this task order. By using approximately \$64,000 of the FY 2007 Navy RDT&E appropriation, CNTPO potentially violated the Purpose Statute. A violation of the Purpose Statute may cause a violation of the Antideficiency Act. The Under Secretary of Defense (Comptroller)/ Chief Financial Officer should direct that the Under Secretary of Defense for Policy conduct an initial review of this purchase to determine whether CNTPO officials committed an Antideficiency Act violation.

We disagree. The critical element of the analysis in the draft IG report was the characterization of the 9601- DGS-LP units as commercial off-the-shelf technology. Federal Acquisition Regulations (FARs), Subpart 2.1 identifies a commercial item as: Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes. The NAL Research Corporation’s 9601 DGS-LP units were not an item customarily used by the general public or by non-governmental entities for purposes other than governmental purposes (TAB G), nor were CNTPO officials aware of any plans to make the 9601 DGS- LP units available commercially. Further, Paragraph 010213 C.5. of the DoD Financial Management Regulation, identifies the criteria for the purchase of items for test and evaluation as:

- (1) Development and preproduction prototypes (RDT&E financed) will be used for Developmental Test and Evaluation (DT&E), including scientific, technical and weapons effects tests. DT&E programs must provide complete and reliable data that can be used to estimate the military utility of new items as a basis for considering decisions to continue engineering development. To this end, it is essential to plan, program, budget and fund for an adequate number of R&D articles for development, test and evaluation that will be fabricated, manufactured or produced in a realistic preliminary production manner and thus provide such data.
- (2) Development and preproduction prototypes (RDT&E financed) will be used for OT&E. When so used, they must be sufficiently representative of the expected production items’ to provide from OT&E a valid estimate of production items operational effectiveness and suitability (including compatibility, interoperability, reliability, maintainability, and logistic and training requirements).

TAB G omitted  
because of length.  
Copies will be  
provided upon  
request.



Finally, paragraph 010213 B of the DoD Financial Management Regulation states, "When, after consideration of the following criteria, there is doubt as to the proper assignment of costs between appropriations, the issue should be resolved in favor of using RDT&E funding."

In its analysis of Task Order 0003 (sensors), the draft IG report states:

On April 2, 2008, SMDC contracting officials issued a task order for approximately \$313,000 to procure low-cost, simple, and reliable ground sensors. The task order states that the ground sensors would detect or classify any or all potential narcotics trafficking in support of the CNTPO mission. Specifically, the contractor was required to provide 20 ground sensors, 5 as the base requirement and the remaining 15 sensors as part of an option. CNTPO officials funded the task order with the FY 2007 Navy RDT&E appropriation.

The contract file indicated 20 ground sensors were commercial items available under a General Services Administration, Federal Supply Schedule contract. According to the General Services Administration Web site, the General Services Administration contract provides commercial items. The Contract file did not indicate that the ground sensors required any engineering, design, integration, test, or evaluation.

CNTPO officials stated that the intent of the ground sensors task order was to solicit commercial solutions and procure a limited set of prototypes units for in-house testing and evaluation in realistic settings. CNTPO officials explained that the testing and evaluation of the ground sensors were not a part of the task order requirements, but part of a "larger project." However, SMDC and CNTPO officials could not provide us with the details of the larger project or documentation of the testing being conducted. By using approximately \$313,000 of the FY 07 Navy RDT&E appropriation, SMDC and CNTPO officials potentially violated the Purpose Statute. The Under Secretary of Defense (Comptroller)/ Chief Financial Officer should direct that the Under Secretary of Defense for Policy conduct an initial review of this purchase to determine whether CNTPO officials committed an Antideficiency Act violation.

The ground sensors procured as part of Task Order 0003 were acquired to develop what CNTPO calls the Counter- Narcotics Unattended Ground Sensor System (CNUGS). The Standard Operating Procedures (SOP) for the CNUG program includes the test plan at TAB H. A detailed test and evaluation plan was written into the Standard Operating Procedure. The Operational Test & Evaluation (OT&E) plan consisted of Field, Depot and Extended tests. Portions of the test and evaluation program were conducted at Fort A. P. Hill during the week of 08 May 2008. In sum, this was an engineering and test effort within the purpose of the RDT&E appropriation. Additionally, the General Services Administration offers items that are only available to customers who are procuring on behalf of a US Federal or State Government, Department, Agency, or Organization, and therefore items offered for sale through the GSA Advantage website are not necessarily commercial items as defined in the Federal Acquisition Regulations (FARs), Subpart 2.1. Finally, the CNUGS devices provided to CNTPO under Task Order 0003

TAB H omitted  
because of length.  
Copies will be  
provided upon  
request.

were not offered for sale to the general public, nor was CNTPO aware of any plans to make the items available commercially (TAB G).

### Recommendations

The draft IG report made two recommendations for Finding D. We will comment immediately after the recommendation.

D.1. We recommend the Under Secretary of Defense (Comptroller)/ Chief Financial Officer to (sic) direct that the Under Secretary of Defense for Policy:

- a. Initiate a preliminary review of the four potential Antideficiency Act violations within 10 days of the date of this report to determine whether a violation occurred a required by DoD Regulation 7000.14-R, "Financial Management Regulation," volume 14, chapter 3.

COMMENT: Disagree. For the reasons stated in our comments to the Finding D, there have been no Antideficiency Act violations.

- b. Complete the preliminary review within 90 days as required by DoD Regulation 7000.14-R, "Financial Management Regulation," volume 14, chapter 3, and provide the results of the preliminary investigation to the Office of the Inspector General.

COMMENT: Disagree. For the reasons stated in our comments to the Finding D, there have been no Antideficiency Act violations.

D.2. We recommend that the Deputy Assistant Secretary of Defense for Counter Narcotics, Counter Proliferation, and Global Threats:

- a. Stop performance on any current task orders and award activities on any new task orders for military construction projects costing more than \$1.5 million financed with the Operation and Maintenance appropriation.

COMMENT: Disagree. For the reasons stated in our comments to the Finding D, there have been no Antideficiency Act violations. Section 1004 provides statutory authority to use CN O&M for unspecified minor military construction project costing up to \$2M.

- b. Budget for and request sufficient funding from the Military Construction appropriation for all military construction projects costing more than \$1.5 million as required by section 2805, title 10, United States Code.

COMMENT: Disagree. For the reasons stated in our comments to the Finding D, there have been no Antideficiency Act violations. Section 1004 provides statutory authority to use CN O&M for unspecified minor military construction project costing up to \$2M.

TAB G omitted because of length. Copies will be provided upon request.

- c. Cancel the policy memorandum for the use of the Operation and Maintenance appropriation on unspecified minor military construction projects as required by DoD Instruction 5025.01, "DoD Directives Program," October 28, 2007.

COMMENT: Disagree. This office is consulting with the proponent of DoD Instruction 5025.01.

- d. Issue a new policy memorandum for the use of the Operation and Maintenance appropriation on unspecified minor military construction projects in accordance with DoD Instruction 5025.01, "DoD Directives Program," October 28, 2007, and ensure that the memorandum complies with section 2805, title 10, United States Code.

COMMENT: Disagree. This office is consulting with the proponent of DoD Instruction 5025.01.

**CONCLUSIONS:** While we certainly appreciate the hard work of the Inspector General's team, we have a fundamental disagreement with the report's conclusions.

We looking forward to discussing our findings with you

<sup>1</sup>NDAA 1991, Conference Report 101-923, p. 647 (Oct. 23, 1990).

<sup>2</sup>NDAA 1991, S. Rep. 101-384, p. 231-32 (July 10, 1990).

<sup>3</sup>This limitation has been raised to \$750,000

<sup>4</sup>1991 Department of Defense Appropriations Act, Pub. L. No. 101-511, Tit. VI, 104 Stat. 1872.

<sup>5</sup>Pub. L. No. 101-510, amended by section 1088(a), National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1992 and 1993, Pub. L. No. 102-190; section 1041, NDAA for FY 1993, Pub. L. No. 102-484; section 1121(a) and (b), NDAA for FY 1994. Pub. L. No. 103-160; section 1011, NDAA for FY 1995, Pub. L. No. 103-337; and section 1021, NDAA for FY 1991, Pub. L. No. 105-261.

# U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contracting and Acquisition Management Office Comments



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
U.S. ARMY SPACE AND MISSILE DEFENSE COMMAND/  
ARMY FORCES STRATEGIC COMMAND  
POST OFFICE BOX 1500  
HUNTSVILLE, ALABAMA 35807-3801

10 JUL 2009


SMDC-CG

MEMORANDUM FOR Inspector General, Department of Defense, 400 Army Navy Drive,  
Arlington, VA 22202-4704

SUBJECT: Contracts Supporting the DOD Counter Narcoterrorism Technology Program  
Office (Project No. D2008-D000AS-0255.000)

1. The U.S. Army Space and Missile Defense Command/Army Forces Strategic Command (USASMDC/ARSTRAT) has reviewed the discussion draft of the subject report and has enclosed specific USASMDC/ARSTRAT comments addressing the recommendations provided.
2. USASMDC/ARSTRAT has initiated corrective actions that adopt the majority of the recommendations made; most of which have already been shared with the auditors assigned to this project. Other corrective actions are collaborative efforts between USASMDC/ARSTRAT, the DOD Counter Narcoterrorism Technology Program Office and the Deputy Assistant Secretary of Defense for Counter Narcotics, Counter Proliferation & Global Threats. Each of the corrective action plans are presented in the enclosure.
3. USASMDC/ARSTRAT offers no comments on the recommendations directed to the Director, Defense Contract Audit Agency, the Under Secretary of Defense (Comptroller)/Chief Financial Officer, or the Deputy Assistant Secretary of Defense for Counter Narcotics, Counter Proliferation & Global Threats.
4. The point of contact for this action is [REDACTED] Director, Contract Operations-East, Contracting and Acquisition Management Center, [REDACTED] or [REDACTED]

Encl

  
KEVIN T. CAMPBELL  
Lieutenant General, USA  
Commanding





REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
U.S. ARMY SPACE AND MISSILE DEFENSE COMMAND/  
ARMY FORCES STRATEGIC COMMAND  
POST OFFICE BOX 1500  
HUNTSVILLE, ALABAMA 35807-3801

10 JUL 2009

SMDC-RDC-A

Memorandum for Inspector General, Department of Defense, 400 Army Navy Drive,  
Arlington, VA 22202-4704

SUBJECT: Contracts Supporting the DoD Counter Narcoterrorism Technology Program  
Office (Project D2008-D000AS-0255.000)

1. The U.S. Army Space and Missile Defense Command/Army Forces Strategic (USASMD/ARSTRAT) Command Contracting and Acquisition Management Office (CAMO) has reviewed the subject draft report and has enclosed specific comments addressing the recommendations provided in the report.
2. The CAMO point of contact is [REDACTED], Director- Contract Operations- East. Her contact information is [REDACTED] or [REDACTED]

Encl  
as

MARY C. DICKENS  
Director, Contracting and Acquisition  
Management Center

USASMDC/ARSTRAT CAMO Comments  
DoD IG Draft Report D2008-D000AS-0255.000  
Contracts Supporting the DoD Counter Narcoterrorism Technology Program

**General Comments:**

CAMO, like most DoD contracting organization, has experienced phenomenal turnover over the past few years. Like other organizations, it is becoming more difficult to attract and retain qualified contracting professionals. The support requirements for the Counter Narcoterrorism Technology Program Office (CNTPO) have evolved and have far surpassed the level envisioned when these contracts were established. This, coupled with personnel shortfalls, resulted in the perfect storm evidenced in this report.

The nature, locations and diversity of support, coupled with extremely high OPTempo dictate a unique mix of dedicated contracting personnel. CAMO has reassessed the demands of this critical program and has, with the assistance of the OSD(P) CN & GT, Department of the Army G-1 and the CNTPO, established an organizational unit that will be dedicated to support this mission and more effectively execute contract actions. Recruitment actions have been initiated. It is anticipated that the team will be fully constituted no later than 2<sup>nd</sup> quarter FY 2010, with the majority of the personnel reporting during 1<sup>st</sup> quarter 2010. In the interim, resources have been realigned to ensure the most effective and efficient support possible within the limited resources available. The material weaknesses identified in the report are directly attributable to the staffing shortfalls for this program and should be rectified once additional staff members are on-board and oriented into the program's unique requirements.

Many of the recommendations reflect on-going actions shared with the auditors. We appreciate the confirmation of our findings and the recommendations to improve the support provided to the CNTPO.

**Finding A: Contract Management**

**Summary of Finding:** CAMO contracting officers and the contracting officer's representatives (CORs) did not properly manage the 35 task orders reviewed, valued at \$98.8 million. Specifically, the contracting officers did not:

- Maintain complete contracting files or require all parties involved to sign memoranda of agreements.
- Properly use firm-fixed-price contract line items for 28 task orders valued at \$32.5 million for de facto cost-type contracts.
- Properly use firm-fixed-price contract line items in 10 task orders for \$16.1 million to buy commercial items; instead they used cost-plus-fixed-fee contract line items and could waste about \$439,000.
- Properly exercise options for four task orders.

- Properly identify or manage Government-furnished property by requiring accountability for an undeterminable quantity of Government property including personal locator beacons, night-vision goggles, and encryption equipment.
- Obtain a Theater Business Clearance before contract award for six task orders from the Joint Contracting Command for Iraq/Afghanistan in Afghanistan.

SMDC contracting officers did not properly manage CNTPO IDIQ contracts because the contracting officers were not properly trained. Inadequate contract management increases the chance that policies will not be followed and laws will be broken. Additionally, the lack of property identification and management reduces Government's ability to determine the whereabouts and condition of Government-furnished property, increasing the likelihood of loss of Government funds. As a result, the goods and services received through these 35 task orders might not meet the needs of the customer or end user, hindering efforts to deter narcoterrorism.

**Recommendation A.1:** Conduct an administrative review of contracting officers that oversaw the management of the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts and take any personnel action warranted.

**CAMO Comment A.1:** CAMO has reviewed the recommendation. Considering that no specific infractions that would warrant disciplinary action were identified in the audit or by CAMO's own observations, a more suitable recommendation is suggested. It is suggested the recommendation read:

*Director, U.S. Army Space and Missile Defense Command/Army Forces Strategic Command, Contract and Acquisition Management Office assess, acquire and train the resources necessary to effectively and efficiently support the CNTPO contract actions.*

As stated above, CAMO has reviewed the staffing designated to support the CNTPO program and found that is has not kept pace with the evolving workload and nature of the requirements identified to be supported under the CNTPO contracts. CAMO has defined the number and skills mix of personnel required to support this crucial mission of national interest. Recruitment actions are underway. It is anticipated that the team will be fully constituted no later than 2<sup>nd</sup> quarter FY 2010, with the majority of the personnel reporting during 1<sup>st</sup> quarter 2010.

**Recommendation A.2:** Conduct an annual training review of all warranted contracting officers to ensure that they receive training required by the Under Secretary of Defense for Acquisition, Technology, and Logistics policy memorandum, "Continuous Learning Policy for the DoD Acquisition, Technology, and Logistics Workforce," September 13, 2002.

**CAMO Comment A.2:** CAMO agrees with the recommendation and conducts these reviews at least semi-annually. All of the contracting officers associated with the CNTPO program have achieved the required certification level for their positions and have satisfied the requirements of the continuous learning policy.

The DoD Continuing Learning (CL) policy mandates the achievement of 80 Continuous Learning Points (CLPs) within two-year CL cycles. The Department of the Army's goal

Revised and  
Redirected, page 12

Renumbered as  
Recommendation  
A.2.a



is that each AT&LWF member obtains 40 CLPs annually to meet the DoD mandate. The DoD CL policy places the authority for awarding CLPs with the supervisors. The DoD CL policy further provides alternative means for obtaining CLPs that do not involve formal classroom training, such as creditable professional activities and work experience.

There were two dedicated and two other contracting officials supporting the CNTPO program at the time of the audit. Each of the contracting officers assigned to the CNTPO program are certified Level III in the contracting career field (CP-14). All mandatory contract-related training was validated as a prerequisite of being awarded this certification level. Once achieving Level III certification, contracting officials must consider both formal and informal training venues and activities to obtain the required 80 CLPs. Attendances at acquisition-related conferences, briefings and symposiums, as well as on-the-job, rotational, and special project participation are examples of creditable activities authorized by the DoD CL policy.

The training records for the CNTPO contracting officers clearly reflected, and the cognizant supervisors appropriately approved, CLPs for activities to include the Annual DoD Procurement Conference, Contracting and Acquisition Management Office Training Symposium, DoD Interagency Acquisition Policy Update Webcast, various acquisition specific Industry Briefings, Project Lead efforts for Lean Six Sigma initiatives involving contracting functions, and Source Selection Evaluation projects. Further, in addition to the cited Structuring Contracts course, the training records for one of these individuals reflected the accomplishment of three graduate-level academic courses to include Procurement and Contract Management, Contract Management Research Seminar and Fundamentals of Earned Value Management.

As stated, CAMO supervisors review the training requirements and training accomplishments of their personnel at least semi-annually, considering not only the required training, but also other training and career-broadening experiences that may be of benefit to the employee in more effectively performing their duties. CAMO has identified several specialized contracting courses that would benefit the members of the CNTPO team. These supplemental courses, to include CON 244 – Construction Contracting, CLC 125 – Berry Amendment, CLC 027 – Buy American Act and CLD 051 – Government Property will be added to the Individual Development Plans (IDPs) of these personnel. The IDPs include a goal of completing these courses no later than 3rd Quarter FY 2010. The delay in completion of this training reflects the staffing plan for the CAMO CNTPO team. Additional information training will be provided to enhance the team members' understanding of contract types and fiscal law – limitations on the various types of funding.

**Recommendation A.3a:** Maintain proper contract files in accordance with Federal Acquisition Regulation Subpart 4.8, "Government Contract Files," and Defense Federal Acquisition Regulation Supplement Subpart 204.8, "Contract Files."

**CAMO Comment A.3a:** CAMO agrees with the statement that a complete contract file must be maintained for each contract action executed. CAMO strives to ensure files are complete and accurate. However, when resources are limited and priorities dictate that

Renumbered as  
Recommendation  
A.2.b.1



attention be focused on providing critical support for the warfighter, maintenance of contract files becomes a lesser priority.

During the audit in-brief, the audit team was advised that recent actions had not been filed in the hard copy files. The auditors, who arrived on 28 August 2008 during the height of fiscal year end, were apprised that the time of the Contracting Officers/Contract Specialists had been prioritized to process urgent requirements supporting warfighters largely deployed to the Iraq and Afghanistan theaters of operation, leaving the filing of documents in the hard copy files to be completed as soon as possible. The majority of the contractual documentation was resident in CAMO's contract writing system, Standard Procurement System Desktop Defense (PD2).

For example, modification 02 to Task Order 0005 of contract W9113M-07-D-0005 was executed on 16 August 2008, twelve calendar days prior to the arrival date of the auditors. The executed copy of the action resided in PD2. Similarly, Modification 02 to Task Order 0006 of contract W9113M-07-D-0007 was executed on 18 June 2008 and was resident in PD2. The contract specialist distributed copies of the actions via electronic data interface to the Defense Finance and Accounting Service (DFAS) and Defense Contract Management Agency (DCMA) Administering Contracting Officers (ACOs), and emailed electronic copies to the contractor and Contracting Officer's Representatives (CORs). No requests were made by the auditors to review files located within PD2. Information was printed from PD2 and provided to the auditors upon receipt of their request for specific documentation.

As stated above, CAMO has reviewed the number and type of personnel necessary to effectively support the CNTOP program. The cadre of personnel being acquired to more effectively support the CNTPO program will include administrative personnel, whose responsibilities will be to ensure more timely and consistent maintenance of contract files. These personnel are scheduled to arrive during the 4<sup>th</sup> quarter of FY 2009. Pending their arrival, CAMO personnel assigned to support the CNTPO mission will strive to ensure hard copy files are maintained. No later than the end of 1<sup>st</sup> quarter 2010, a 100% inventory of all files will be executed, ensuring all files are properly labeled and contain all required documentation to support each task order awarded. A task order file checklist will be used to ensure consistency of files maintenance.

**Recommendation A.3.b:** Require that all parties named in memoranda sign the documentation.

**CAMO Comment A.3.b:** CAMO agrees with the statement that DFARS Subpart 204.8 requires the official contract files consist of original, authenticated or conformed copies of contractual instruments, as well as signed or official copies of correspondence, memoranda and other documents. However, statements made in the audit report failed to accurately represent the impact of not having the two referenced memoranda signed by all parties.

The report indicates "...the contracting officer did not require that all parties sign memoranda of agreement." The task authorization letters referred to by the auditors are

Renumbered as  
Recommendation  
A.2.b.2

Task Order Authority Memorandum of Record (TO MOR). The purpose of these memoranda is for the requiring activity to clearly document the statutory authority for the requirement presented. The TO MORs are executed by the requiring activity and signed by CNTPO Program Executive, or his designee. The 'missing signature' is the "reviewed by" signature. For these actions, the reviewer was the SMDC legal counsel supporting the CNTPO program. The Contracting Officer provided electronic copies of the actions, including the TO MOR, task order, task order request for quotation, task order proposals, and task order evaluations to legal counsel for review. Prior to award, the task order actions were found to be legally sufficient. In all cases, the legal sufficiency of the action was documented. Although legal counsel reviewed the electronic copies of the TO MOR, legal counsel had not in all cases signed the hard copies of the TO MORs. As stated, the TO MOR was reviewed by legal counsel as part of their review of the task order actions. Their affirmation of acceptability of the document was inferred in their legal sufficiency statement. In retrospect, the annotation of review on the TO MOR is a redundant action. As such, this review line will be deleted from future TO MORs.

The second area of the contract files discussed in the report was the Delegation of Contract Administration authority to the cognizant DCMA office. A blanket delegation was provided to each of the five awardees' respective DCMA offices at the time the contracts were awarded. Separate delegations were executed when the place of performance was Outside of the Continental United States (OCONUS). The missing portion of the delegations for these files was acknowledgement of the delegation from the Administering Contracting Officer (ACO) located in the Afghanistan theater. Attempts to obtain acknowledgements from those ACOs have, to date, been unsuccessful. CAMO has discussed this situation with several of the 'corporate ACOs.' It appears that a more appropriate action is for the corporate ACOs to issue sub-delegations to the DMCA organizations located in or near the actual places of performance. CAMO will continue to communicate and work with DCMA to ensure the appropriate sub-delegations are executed.

**Recommendation A.3.c:** Remove the firm-fixed-price, level-of-effort requirements from current task orders that should have been awarded as cost contracts and include a written determination for the change in the contract file.

**CAMO Comment A.3.c:** CAMO agrees with the audit report's finding that the task orders executed as firm fixed price, level of effort (FFP LOE) arrangements were largely administered as labor hour (LH) arrangements. Further, CAMO agrees with the preference for firm, fixed price (FFP) arrangements and is making changes to the basic contracts to execute them to the greatest extent practicable. However, it is CAMO's belief that LH arrangements, where the rates per labor category are pre-established and based upon adequate competition, will provide a better solution for the type of requirements presented under these contracts than FFP LOE or Cost-Plus-Fixed Fee (CPFF) arrangements.

Under an FFP LOE contract, the contractor promises to deliver a stipulated level of effort, e.g., 1,000 hours, doing work of a certain kind, in return for a firm-fixed-price. The contractor is not paid by the hour, or for completion of the work, but rather for

Renumbered as  
Recommendation  
A.2.b.3



delivery of the stipulated number of hours. The contractor is entitled to payment of the lump sum firm, fixed price only upon delivery of the level of effort. These types of arrangements are not subject to audit.

Under a labor hour arrangement, the contractor is paid by the hour until specified work is completed or the contractor reaches the ceiling price, whichever comes first. If the contractor has not completed the work by the time it has reached the ceiling price, the contracting officer may increase the ceiling price and require the contractor to continue working. LH arrangements are cost-type arrangements and subject to audit; in this case to ensure the labor hours provided were in fact delivered as invoiced. The firm, fixed rates per labor category that are set forth in the basic contract, were established through competition. These rates form the basis and foundation for invoicing and are not subject to audit.

The audit report accurately indicates that under FFP arrangements, the burden of risk is on the contractor to provide the contracted services/supplies for the firm, fixed price agreed to. In the case of the FFP LOE arrangement, the contractor only has to provide the agreed to level of effort (e.g., number of hours) for the lump sum fixed price agreed to. There is no mechanism to ensure the skills mix provided represent the most efficient and effective usage in the execution of the promised level of effort. Further, the Government does not have the ability to influence the execution of the firm, fixed price effort. Under a LH arrangement, the Government only pays for the labor hours executed at the firm fixed labor rates per labor category negotiated. Aggressive surveillance permits the Government to challenge the efficiency of the task execution and bring inefficiencies to the attention of the contractor. Review of progress reports provides the Government the opportunity to highlight any trends that may have detrimental impact on the overall performance or price of the task order. If the Government believes that hours were not worked or incorrect labor categories were billed, the Government may request an audit and take necessary action based upon the audit.

Although labeled as FFP LOE arrangements, the task orders were actually executed as LH arrangements. The scope of the CNTPO IDIQ is broad and provides for satisfaction of diverse requirements including those categorized in the broad areas of aviation, construction, services and supply. During the acquisition planning phase, the Government contemplated that the majority of requirements would be performed OCONUS. It was concluded that the resultant contract must be flexible and capable of performing wherever the terrorist and narcoterrorist threats were located. It recognized that the majority of the requirements would not be specifically quantifiable, but rather situation dependent, requiring adaptability to the environment where performance would occur. Given that, the basic contract, as solicited and awarded, provided for the ordering of labor solely under FFP LOE or CPFF task order arrangements. The basic contracts do not include an ordering mechanism or terms and conditions to accommodate FFP task orders. Although the terms of the contract clearly stated the contract type would be FFP LOE, the ordering processes of the contract clearly depicted a LH arrangement, as did each task order citing the task order type as a FFP LOE arrangement to satisfy labor requirements.

(1) FAR 16.601(d) indicates that labor-hour arrangements may be employed when it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of certainty. FAR 16.601(c)(2) indicates that the contract shall specify separate fixed hourly rates that include wages, overhead, general and administrative expenses and profit for each category of labor. The Labor Pricing Matrices included in Section J of the contracts provide such. These labor rates form the basis for task order proposals and the basis for invoices submitted.

(2) FAR 16.601(d)(2) requires that the task order include a ceiling price that the contractor exceeds at his own risk, and that each task order citing a FFP LOE arrangement state such. The task orders executed by CAMO satisfied these requirements. Further, Section B of the basic contract provides the following:

#### CNTPO SUPPORT

The contractor will provide services and supplies, as defined in one or more fully executed task orders (T/Os), in accordance with PWS entitled "DoD Counter NarcoTerrorism Technology Program Office Programs and Operations Support," dated **12 February 2007**, incorporated herein as set forth in Section J hereof. Section B includes prenegotiated Fixed-Price **Labor Category rates** (FFP), pre-established Labor Category rates (CPFF), and Cost-Reimbursable Other Direct Costs (ODCs). Travel and DBA Insurance ODCs are not fee-bearing, but do allow for payment of indirect costs at prenegotiated fixed rates. Material and Other Direct Cost ODCs are fee bearing.

Each FFP/LOE T/O shall be billed and paid in accordance with the prenegotiated fixed price per hour for each applicable labor category hour performed by the Contractor, as stated in Section J, Attachment 6, B0: Rates for Contract. Each CPFF T/O shall be billed in accordance with the pre-established rate per hour for each applicable labor category hour performed by the Contractor, as stated in Section J, Attachment 6, B0: Rates for Contract. Indirect rates applicable to ODCs shall be billed and paid for as incurred by the contractor at the rates provided in Section J, Attachment 6, B0: Rates for Contract. If the T/O is Fixed-Price Level-of-Effort, the T/O shall be billed and paid in accordance with **Fixed-Price Labor Category rates** of the T/O. If the T/O is cost plus fixed fee, the T/O shall be billed and priced in accordance with approved cost-reimbursable amount(s) as stated in the executed T/O.

As stated, CAMO has reassessed the contract types used and required considering the lessons learned from the first task orders awarded. Changes to the contracting are being executed to redefine the contract types that may be employed at the task order level, as well as invoicing and payment procedures and any updates necessary to ensure comprehensive coverage of OCONUS support requirements. These modifications are anticipated to be completed by the end of the 4<sup>th</sup> quarter FY 2009.

**Recommendation A.3.d:** Include an approval document, from the head of contracting, in the contract files for any task order with firm-fixed-price, level-of-effort requirements that exceeds \$100,000.

Renumbered as  
Recommendation  
A.2.b.4

**CAMO Comment A.3.d:** As stated above, although labeled in the contract writing system as FP LOE arrangement, the task orders were actually executed as LH arrangements. The option to award FFP LOE arrangements will be removed from the basic contracts with the finalization of FFP terms and conditions.

**Recommendation A.3.e:** Request that the contractors refund the Government any fee received in the payment of commercial items.

Renumbered as  
Recommendation  
A.2.b.5

**CAMO Comment A.3.e:** CAMO disagrees with the statement that it wasted approximately \$439,000, by paying unnecessary fees to contractors for commercial items. The IG's statement is based upon a misunderstanding of the terms of the CNTPO contracts.

During the market research period, and as documented in the Acquisition Strategy, the Contracting Officer concluded that the preponderance of effort that was contemplated to be executed under the resultant contracts was not envisioned to meet the definition of commercial items/commercial services. As such, the contracts were not categorized as commercial items/services, nor were appropriate and required terms and conditions for the acquisition of commercial items/services included in the contracts. The IG report suggests that one element of the solutions (materials) provided in these task orders be categorized as commercial items. This would be similar to parsing a single aspect of a larger requirement (e.g., a commercially available bolt included in a military track vehicle) and characterizing the entire requirement as commercial. Similarly, one cannot view a single task order or even a group of task orders that may include some commercial items as part of the contractors' solutions to the task orders and conclude that the contracts be categorized as commercial items. Instead, the nature of the contemplated requirements must be viewed in whole, considering all aspects of the collective requirements. There were no facts presented in the report that refuted the statements made in the approved Acquisition Strategy that the preponderance of the effort was not for commercial services or supplies. As such, findings regarding the acquisition of commercial items should be withdrawn.

The report indicates that "CAMO contracting officials wasted approximately \$439,000 by paying unnecessary fees to contractors for commercial items." Setting aside the difference in opinion as to whether the CNTPO contracts were commercial or



noncommercial, auditors failed to consider that there is no prohibition on a prime contractor charging profit on materials provided by a subcontractor or supplier. The audit report should have recognized that the basic contracts set forth the minimum (0%) and maximum fixed fee amounts (5%) that may be reimbursed for materials. FFP arrangements, based upon competition as these were, provide the Government no visibility into the price of the item, indirect rates or profit. The amount of profit charged is based upon the profit objectives of the firm and typically includes as much profit as the market will bear. The fixed fee included in the task orders for items awarded on a CPFF basis equated to approximately 3% of the total estimated costs of materials. It would not be unusual to see profit rates of 10% or higher for materials delivered to places of performance similar to that identified in these task orders.

There is no factual evidence presented by the auditors to substantiate the allegation that CAMO contracting officials wasted approximately \$439,000 by paying unnecessary fees on materials. As such, it is recommended that these statements be withdrawn.

**Recommendation A.3.f:** Conduct a review of all task orders to identify any additional fees paid for commercial items, and request that the contractors refund any fee expended for the procurement of commercial items.

**CAMO Comment A.3.f:** See CAMO's response to Recommendation 3.e above. Suggest this recommendation be withdrawn.

**Recommendation A.3.g:** Confirm that contractors have adequate contract surveillance plans before awarding any future task orders with cost or cost-plus-fixed-fee contract line items as required by Federal Acquisition Regulation Subpart 16.3, "Cost Reimbursement Contracts."

**CAMO Comment A.3.g:** CAMO agrees, in principal, with this recommendation. However, the awarded contractors' quality control program were evaluated as part of the source selection process that led to the award of these contracts; all were found to be sufficiently robust to ensure effective performance and compliance with task order requirements. There were no findings presented in the audit report that would indicate any deficiencies in the contractors' quality control programs. Further, there were no findings presented in the audit report that indicated any deficiencies in the contractor's cost accounting systems. As such, it is suggested that this recommendation be withdrawn.

**Recommendation A.3.h:** Procure commercial items on a firm-fixed-price basis, as required by Federal Acquisition Regulation Subpart 12.2, "Special Requirements for the Acquisition of Commercial Items."

**CAMO Comment A.3.h:** See CAMO's response to Recommendation 3.e above. Suggest this recommendation be withdrawn.

Renumbered as  
Recommendation  
A.2.b.6

Revised and  
renumbered as  
Recommendation  
A.2.b.7

Renumbered as  
Recommendation  
A.2.b.8

**Recommendation A.3.i:** Comply with ordering requirements in Federal Acquisition Regulation Subpart 16.5, "Indefinite-Delivery Contracts," when issuing task orders under indefinite-delivery, indefinite-quantity contracts.

Renumbered as  
Recommendation  
A.2.b.9

**CAMO COMMENT A.3.i:** This recommendation appears to be duplicative of Recommendation 3.j. below. Suggest this recommendation be withdrawn, absent information other than that stated in the following recommendation.

**Recommendation A.3.j:** Modify task order W9113M-07-D-0006-0004 to comply with Federal Acquisition Regulation Subpart 16.5, "Indefinite-Delivery Contracts," and explicitly state in the task order the number of tracking devices needed to meet DoD Counter Narcoterrorism Technology Program Office requirements and the cost of the tracking devices.

Renumbered as  
Recommendation  
A.2.b.10

**CAMO Comment A.3.j:** CAMO agrees that this task order was initially published incorrectly with an indefinite quantity of tracking devices, ancillary devices and airtime included in the requirements. However, over the course of soliciting this requirement, the requirements were revised to reflect firm requirements, as evidenced by the revised proposal submitted by the selected offeror. There were no additional quantities or unpriced options included in pricing section of the award document. However, the language of the performance work statement was not revised to reflect the changes in price, resulting in the inclusion of requirements (indefinite quantities) that had been deleted during the negotiation phase of this task order. All 50 of the units and ancillary devices have been received. Upon consumption of the airtime acquired, this task order will be closed. Given that, there is no benefit in modifying this task order.

**Recommendation A.3.k:** Properly exercise contract options and modifications to extend contracts in accordance with Federal Acquisition Regulation Subpart 17.2, "Options," and Federal Acquisition Regulation clauses 52.217-8, "Option to Extend Services," and 52.217-9, "Option to Extend the Term of the Contract."

Renumbered as  
Recommendation  
A.2.b.11

**CAMO Comment A.3.k:** CAMO agrees with the statement that D&Fs were not included in the task order files to support the exercise of options. Options that are executed on 1 July 2009, or after, will have properly executed D&Fs in the file. However, the implications of not providing preliminary notice of the Government's intent to exercise an option are overstated.

The options included in these task orders set forth the terms, conditions and prices applicable under each option. If exercised with appropriate notices, the terms and price of these options remain fixed, as negotiated. When not exercised with appropriate notices, the Government incurs a risk that the contractor could request changes to the terms, conditions and prices of these options. To date, such has not occurred. Moreover, the contractors accepted the late notice and performed the options at the prices originally negotiated and included in the task order. Furthermore, under proper circumstances, even once an option exercise date has passed, the Government and contractor can agree to exercise and perform the work identified in the option, as was the case for task order 0004 under contract W9113M-07-D-0005.

Although the files were not documented as required, the actions necessary to exercise an option were executed. The options exercised were within a close proximity of the actual task order awards. As such, market conditions would not have changed to the point that the prices for options included in the task orders would have been questioned. Further, communications took place between the CNTPO and CAMO that validated the requirement and ensured there were not changes in the requirement that would dictate renegotiation of the option. Funding was made available for the options. Moreover, the contractor executed the options as if they had received the Government's notice of intent to exercise the option.

**Recommendation A.3.I:** Properly identify all Government-furnished property provided to the contractors in the solicitations for task orders as required by the Federal Acquisition Regulation Subpart 45.2, "Solicitations and Evaluation Procedures."

**CAMO Comment A.3.I:** CAMO concurs with this recommendation. CAMO agrees with the statements that Government Furnished Property (GFP) was not properly identified by specific make, model, serial number, condition and date of availability in the terms of the task order. Additionally, in some cases items were improperly categorized as GFP; however, the property was not provided to the contractor. Instead, the contractor was granted periodic access to property managed and maintained by the government. For example, task order 0005 awarded under contract W9113M-07-D-0005 provides services in support of the development of the Afghanistan counter narcotics mentorship, regional training team and operational support team program. Contractor personnel work in Government provided workspace. Paragraph 9.0 of the performance work statement (PWS) indicates the following:

**9.0 GOVERNMENT FURNISHED EQUIPMENT OR MATERIAL (GFE/GFM).** The following items will be provided GFE/GFM.

- Weapons/protective gear for positions needing weapons (linguists shall not be provided weapons);
- Common Access Cards (CACs);
- Office space for certain positions as described in Attachment B (does not include computer, chair, or other equipment);
- Unclassified network connectivity as determined by the Government;
- Classified network connectivity as determined by the Government;
- RTT courses of instruction;
- Radios for NIU/OST operations; and,
- Non-routine emergency medical care.

It was the Government's intent that the weapons, protective gear and radios not be provided to the contractor, but rather 'checked-out' when needed. In this case, the contractor would have been provided access to the equipment; however, title and accountability for the property would remain with the Government. This task order was

Renumbered as  
Recommendation  
A.2.b.12



subsequently modified and the contractor was required to provide these items when it was found the Government was unable to provide them.

CAMO has formalized its task order review process, including task order review checklists that will aid in the property identification of GFP and ensure clarity of Government requirements. Additionally, CAMO has added oversight of GFP to the delegations for Contracting Officer Representatives/Contracting Officer Technical Representatives as part of their task order surveillance responsibilities. CAMO has also conducted training with CNTPO to properly identify GFP in task orders and have established a formal property management process.

Additionally, CNTPO has initiated personnel actions that will result in a full-time task order surveillance capability serving the CENTCOM AOR and based in Afghanistan. To date, one GS14/15 project lead has been identified with one to two additional Government personnel scheduled for deployment. Full Operational Capability is anticipated to be achieved by the end of CY 2009. These additional personnel, working directly in one of the principal places of performance, along with closer coordination with DCMA, will provide more effective administration of GFP.

**Recommendation A.3.m:** Use an approved system to track and maintain the condition and location of all Government-furnished equipment, materials, or property as required by DoD Instruction 5000.64, "Accountability and Management of DoD-Owned Equipment and Other Accountable Property."

Renumbered as  
Recommendation  
A.2.b.13

**Comment A.3.m:** CAMO agrees with this recommendation. To supplement the oversight delegated to DCMA, CAMO and CNTPO have implemented a commercial asset management software system that is used to track and maintain the condition and location of all Government-furnished equipment, material or property as recommended. As part of the implementation, a complete CNTPO property system analysis has been initiated and is currently approximately 90% complete. It is anticipated that the analysis will be complete by the end of 4<sup>th</sup> quarter 2009. To date, corrective actions resulting from this on-going assessment have been completed for approximately 60% of all task orders awarded through 1 May 2009. It is anticipated that all corrective actions for all task orders awarded through the date of this response will be completed by 1 December 2009. Moreover, the system will track GFP offered in all new requirements and task orders effective the beginning of the 4<sup>th</sup> quarter 2009.

**Recommendation A.3.n:** Formalize an agreement with the Director, Defense Contract Management Agency to conduct administrative oversight of the task orders issued under the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts and request that the Director:

Renumbered as  
Recommendation  
A.2.b.14

1) Appoint an administrative contracting officer to perform administrative oversight of the task orders.

2) Appoint a certified property administrator to conduct at least semiannual inventories of all Government-furnished property for task orders.

**CAMO Comment A3.n:** CAMO agrees with this recommendation. Discussions have been initiated with the ACOs for the respective prime contractors. Further, CAMO has added an additional Property Administrator to its staffing requirements for FY2010, thus ensuring additional resources to aid in the effective administration of GFP.

**Recommendation A.3.o:** Obtain the necessary Theater Business Clearance for any task order performed in or involving goods delivered to Iraq or Afghanistan as required by Under Secretary of Defense for Acquisition, Technology and Logistics Memorandum, "Retroactive Iraq/Afghanistan Contract Compliance and Assignment of Contract Administration," December 20, 2007.

Renumbered as  
Recommendation  
A.2.b.15

**CAMO Comment A.3.o:** CAMO agrees with this recommendation. The backlog in executing these clearances should be overcome with the additional staffing that will be provided to support this program. It should be noted that the primary client for these task orders, U.S. Central Command (CENTCOM), had coordinated with the Theater and apprised of the entry of contractor personnel identified to execute these task orders.

**Recommendation A.3.p:** Modify all task orders requiring a Theater Business Clearance to include all necessary contract clauses as required by Under Secretary of Defense for Acquisition, Technology and Logistics Memorandum, "Retroactive Iraq/Afghanistan Contract Compliance and Assignment of Contract Administration," December 20, 2007.

Revised and  
renumbered as  
Recommendation  
A.2.b.16

**CAMO Comment A.3.o:** CAMO disagrees with this recommendation. The basic contracts include guidance, information and direction regarding OCONUS support. As such, inclusion of these clauses at the task order level would be redundant.

CAMO suggests that a more suitable recommendation would be as follows:

*Review the terms of the basic contracts to ensure appropriate clauses and contract terms are included as required by Under Secretary of Defense for Acquisition, Technology and Logistics Memorandum, "Retroactive Iraq/Afghanistan Contract Compliance and Assignment of Contract Administration," December 20, 2007.*

CAMO is reviewing the terms of the basic contracts, in conjunction with other changes to the basic contracts (e.g., task order types and invoicing procedures) to ensure the information included regarding OCONUS support requirements complies with this Memorandum and other similar requirements for performance in other OCONUS locations. This review and any necessary updates to the basic contracts will be executed prior to the end of 4<sup>th</sup> quarter FY 2009.

**Recommendation A.3.q:** Receive and maintain the necessary contract-related training and continuous learning points to preserve contracting proficiencies and skills in accordance with the Under Secretary of Defense for Acquisition, Technology, and Logistics policy memorandum, "Continuous Learning Policy for the DoD Acquisition, Technology, and Logistics Workforce," September 13, 2002.

Deleted

**CAMO Comment A.3.q:** See Recommendation 2 above. CAMO believes this recommendation is very similar to, if not duplicative of, that recommendation.

CAMO does not agree with the statement "CAMO contracting officers did not properly manage the CNTPO IDIQ contracts or Government-furnished property because contracting officers were not properly trained." There was no factual information presented to support the assertions that CAMO contracting officers did not properly manage the CNTPO IDIQ contracts because they were not properly trained. As suggested above, it is suggested that the audit report recommend CAMO properly staff support provided under this program.

**Conclusion:** The conclusion presented in the report suggests a lack of training and lack of contract administration as the reason for the deficiencies noted. The preferred conclusion would be that CAMO was not properly resourced to effectively and efficiently satisfy the requirements levied to support the DoD's mission on counterterrorism/counternarcotics, as identified by the CNTPO. This recommendation would better serve as the foundation for assessment that has been completed, ensuring proper resources are allocated to satisfy this critical mission.



## 2. Finding B. Contract Surveillance:

**Summary of Finding:** SMDC contracting officials and CORs did not conduct adequate contract surveillance for 35 task orders valued at approximately \$98.8 million.

**Recommendation B.1:** Develop and implement a systematic Government quality assurance program for the task orders issued under the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts as required by Defense Federal Acquisition Regulation Supplement Part 246, "General."

**Recommendation B.2:** Finalize and approve the overall quality assurance surveillance plan and use when developing individual quality assurance surveillance plans for task orders issued under DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts.

**CAMO Comment B.1 and B.2:** CAMO agrees with these recommendations.

CAMO has worked with the CNTPO and developed a more comprehensive quality assurance program. The basic quality assurance hierarchy includes the employment of Contracting Officers, Contract Specialists, CORs, COTRs and Subject Matter Experts (SMEs). The Contracting Officers and CORs will largely be aligned functionally along the major functional lines of services and supplies acquired (i.e., aviation, construction, services, supplies). This functional alignment will ensure personnel are well-versed in the unique aspects and authorities of the functional area they support, and carry workloads that will permit them to effectively oversee and guide actions under their purview. The Contracting Officers and CORs will be supported by Contract Specialists and COTRs who will be responsible for the day-to-day contract administration and quality assurance of the individual task orders. The COTRs will be supported by SMEs, providing additional technical expertise in the functional areas.

During the visit to Huntsville, CAMO shared the contract-level QASP that had been developed, and plans to develop task order level QASPs. The contract-level QASP meets all requirements of FAR Subpart 46.6, to include purpose, authority and scope of the QASP, roles and responsibilities, methods of surveillance, payment monitoring techniques, required reporting and the requirement for individual task order surveillance plans.

One of the key elements of the task order surveillance plans is the Performance Requirements Summary (PRS); the PRS sets forth the performance objectives, performance standards, acceptable quality levels, method of surveillance and performance incentives (if applicable). Each services task order awarded includes a PRS. Further refinement of the task order level QASPs is underway, as is the task order surveillance process. Task Orders awarded 1 October 2009, or after, will include task order surveillance plans that include not only the PRS, but also more comprehensive information that specifically addresses when surveillance will take place and by whom.

Revised

Monthly Reports will be generated by the COTRs providing visibility of task executions progress. These reports will include status reporting aligned with project execution milestones, which will also support the invoice review process.

It is anticipated that these systemic changes will be in effect no later than the end of the 1<sup>st</sup> quarter 2010.

**Recommendation B.3:** Implement an individual quality assurance surveillance plan for each task order as required by Federal Acquisition Regulation Subpart 46.4, "Government Contract Quality Assurance."

**CAMO Comment B.3:** CAMO agrees with this recommendation but suggests that it is part of Recommendation 2 and should therefore be withdrawn.

**Recommendation B.4:** Designate in writing a properly trained contracting officer's representative for each task order in accordance with Defense Federal Acquisition Regulation Supplement Subpart 201.6, "Career Development, Contracting Authority, and Responsibilities."

**CAMO Comment B.4:** CAMO agrees with this recommendation.

At the time of the audit, there were two CORs delegated authority as such under the CNTPO MAIDIQ; [REDACTED] These CORs were delegated authority at the basic contract level. Task Order Monitors (TOM) were designated to assist the CORs execute the task order surveillance effort, and were identified at the task order level. CAMO takes no exception to the statements that these CORs were improperly instructed and authorized to designate the Task Order Monitors, which amounted to a sub-delegation of their authority.

CAMO has delegated COR authority to CNTPO personnel who will have overall programmatic responsibilities and oversight duties over all task orders awarded. CAMO is currently delegating Contracting Officer Technical Representative (COTR) authority, at the task order level, to those individual that will have surveillance and inspection responsibilities at the task order level.

**Recommendation B.5:** Require that contracting officer's representatives comply with the Office of Management and Budget's contracting officer's representative certification program until DoD officials establish a standard DoD contracting officer's representative certification.

**CAMO Comment B.5:** CAMO agrees with this recommendation. CNTPO is now required to nominate CORs and COTRs when submitting requirements. These nominations include not only the request for nomination, but also evidence of training completed, or scheduled to be completed by the proposed COR/COTR, and concurrence that standards/objectives regarding effective, efficient and timely execution of COR/COTR duties be included in the performance plans for these individuals.

**Recommendation B.6:** Remove the waiver from the Army Space and Missile Defense Command Contracting Officer Representative policy issued on November 4, 2008, that allows the Commander, Army Space and Missile Defense Command to appoint contracting officer representatives to DoD contracts that are not trained in accordance with Federal or DoD policy.

**CAMO Comment B.6:** CAMO disagrees with this recommendation and believes the auditors misinterpreted the policy. The policy clearly referenced all of the directives and guidance provided by the Office of the Secretary of Defense and Office of the Assistant Secretary of the Army and recited much of the information set forth in those memorandums. Also included in the policy were operating procedures unique to USASMD/ARSTRAT regarding limitations of COR/COTR duties within a single major command element. These limitations were imposed to ensure the integrity of the contract oversight process. The waiver provision of the policy was included, recognizing that unique circumstances may be presented that require exercise of the Commander's discretion. However, the policy makes clear that each waiver request must be "documented in writing, citing the advantages and disadvantages of granting the waiver, the conditions under which the waiver is allowed, the termination date or conditions of the waiver and the rationale supporting the granting of the waiver." A clear reading of the policy indicates that the conditions under which the waiver is allowed must be presented to the Commanding General for his consideration. Mandates by the Secretary of Defense and Office of the Assistant Secretary of the Army are not conditions that would permit the Commanding General to grant a waiver.



### **Finding C: Contractor Billing**

**Summary of Finding:** DoD officials did not ensure that the contractors were fully entitled to the \$47.9 million paid on the CNTPO IDIQ task orders.

**Recommendation C.1:** Recommendation 1 was a recommendation directed to DCAA.

**Recommendation C.2.a:** Modify the DoD Counter Narcoterrorism Technology Program Office indefinite-delivery, indefinite-quantity contracts to:

- 1) Require that the contractors provide submitted payment requests under public vouchers to the Defense Contract Audit Agency for processing.
- 2) Include the acceptance period for goods and services that contractors deliver.
- 3) Require that the contractors provide detailed cost documentation and information in contractor bills as required by DoD Regulation 7000.14-R, "Financial Management Regulations," volume 10, "Contract Payment Policy and Procedures," chapter 8, "Commercial Payment Vouchers and Supporting Documents."

**CAMO Comment C.2a:** CAMO agrees that additional oversight is required in this area. Discussion held with the ACOs and DCAA auditors for the prime contractors confirmed that the transition from submission of public vouchers to submission of requests for payment under the DoD's Wide Area Workflow (WAWF) system has occurred. Discussion with the ACOs also indicated general agreement with the current process of permitting the submission of "2-in-1" invoices whereby COR/COTR acceptance of requests for payment are scanned into the WAWF system as evidence of payment.

CAMO takes exception to the section of the report that report indicates "CAMO contracting officers did not require in the contract that contractors submit proper public vouchers (contractor bills)." Clauses are included in the basic contracts that dictate the information required to support claims for payment (e.g., 52.232-7 - Payments Under Time-and-Materials and Labor-Hour Contracts; 52.232-25 - Prompt Payment, etc).

Section G of the basic contracts includes the following direction:

#### **INVOICING AND VOUCHERING:**

*a. When authorized by the Defense Contract Audit Agency (DCAA) in accordance with DFARS 242.803(b)(i)(C), the contractor may submit interim vouchers directly to paying offices. Such authorization does not extend to the first and final vouchers. Submit first vouchers to the cognizant DCAA office. Final vouchers will be submitted to the ACO with a copy to DCAA.*

*b. Upon written notification to the contractor, DCAA may rescind the direct submission authority.*

c. Should the contractor decline to submit interim vouchers directly to paying offices or if the contractor receives written notification that DCAA has rescinded the direct submission authority, public vouchers, together with any necessary supporting documentation, shall be submitted to the cognizant Defense Contract Audit Agency (DCAA) Office, prior to payment by the Finance and Accounting Office specified in Block 12, Page 1, Section A, of Standard Form 26.

d. The contractor shall identify on each public voucher: (1) The accounting classification reference number (ACRN) assigned to the accounting classification which pertains to the charges billed, e.g. "ACRN: AA;" (2) the Order Number/PRON; and (3) the words "CNTPO CONTRACT" in bold type on the face page of the voucher. Since vouchers are paid by Order Number/PRON within accounting classification, it is necessary that the Order Number/PRON be shown on each voucher.

e. Department of Defense requires that the Taxpayer Identification Number (TIN) be placed on all certified payment vouchers, including non-profit organizations, when submitting payment to the disbursing office. The only exception is foreign vendors, which will have the word "foreign" in the TIN field. Invoices will be returned to the vendor without payment if a TIN is not provided.

f. The contractor may include in provisional vouchers fixed fee based on the percentage of work completed, subject to the withholding reserve of the contract clause titled "Fixed Fee." The Contracting Officer may elect to withhold or accelerate fee payment based upon the Contractor's actual performance as compared to the milestone events target dates as set forth in Section F hereof.

g. The Paying Office shall ensure that the voucher is disbursed for each ACRN as indicated on the voucher (or as specified herein).

This clause recognizes the provisional billing/payment status of invoices submitted pursuant to the type of task order arrangements employed on these task orders. These provisional payments are subject to audit by DCAA. CAMO takes no exception with the statement suggesting that reviews of the invoices should be executed to ensure, even with provisional payments, no irregularities are identified. However, the audit findings should recognize that these provisional payments are subject to audit and will be audited as part of the task order close-out process. FAR 52.216-7, Allowable Cost and Payment is included in the basic contracts.

In conjunction with the modification of the basic contracts to update the types of task orders that may be used under this program (i.e. deletion of FFP LOE and inclusion of FFP), additional billing information will be included, to include direction for submission of payment supporting detail. Remedial training and additional guidance will be provided to Government and contractor personnel during an upcoming Program Review (July 2009).



**Recommendation C.2.b:** Require that contracting officer's representatives review and approve contractor bills before authorizing payment to ensure that the bills are commensurate with contract performance, which includes review of supporting documentation for those costs.

**CAMO Comments C.2.b:** CAMO agrees with this recommendation. This requirement has been levied on the CORs since the onset of the program. Reinforcement of this requirement has been included in the COR/COTR delegation letters and in the remedial training referenced above. Certification of such review is executed in WAWF.

**Recommendation C.2.c** Require that contracting officer's representatives or officials with the receiving activity properly accept all goods and services provided by the contracts through the use of receiving reports or their equivalents in accordance with Federal Acquisition Regulation Subpart 46.4, "Government Contract Quality Assurance," and DoD Regulation 7000.14-R, "Financial Management Regulation" volume 10, "Contract Payment Policy and Procedures," chapter 1, "Financial Control of Vendor and Contract Payments."

**CAMO Comment C.2.c:** Similar to Recommendation 2b., this requirement has been levied on the CORs since the onset of the program. Reinforcement of this requirement has been included in the COR/COTR delegation letters and in the remedial training referenced above. Certification of acceptance of goods and services will be annotated in WAWF.

**Other Direct Costs:** Although no recommendations were made in this area, CAMO disagrees, in part, with statements made regarding ODCs.

ODCs, when ordered under the CPFF provisions of the task order arrangement, are provisionally billed and subject to the same DCAA audit discussed above. The high value of the ODCs typically reflects the contractor's accounting practice to include supplier services as ODCs (vice materials). DCAA conducts period incurred cost audits during the course of task order execution. Additionally, DCAA conducts an audit of all costs incurred upon task order completion and recommends to the Contracting Officer, those costs that is finds to be unallocable, unallowable, improperly stated, or overstated.

CAMO agrees additional effort and resources are required in this area to more effectively ensure proper billing for goods and services received.



# Inspector General Department of Defense

